

Volume 20  
Number 14  
May 15, 2003  
Pages 1031 - 1458

# The Oklahoma Register

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Oklahoma  
Secretary of State  
Office of Administrative Rules



**Brad Henry, Governor**  
**M. Susan Savage,**  
**Secretary of State**  
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ISSN 0030-1728

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<b>MEDICAL</b> Technology and Research Authority of Oklahoma	440	<b>SECRETARY</b> of State	655
Board of <b>MEDICOLEGAL</b> Investigations	445	Department of <b>SECURITIES</b>	660
Department of <b>MENTAL</b> Health and Substance Abuse Services	450	Board of Regents of <b>SEMINOLE</b> State College	665
<b>MERIT</b> Protection Commission	455	<b>SHEEP</b> and Wool Commission	670
Department of <b>MINES</b>	460	State Board of Licensed <b>SOCIAL</b> Workers	675
Oklahoma <b>MOTOR</b> Vehicle Commission	465	<b>SOUTHERN</b> Growth Policies Board	680
Board of Regents of <b>MURRAY</b> State College	470	Oklahoma <b>SOYBEAN</b> Commission ( <i>abolished 7-1-97</i> )	685
Oklahoma State Bureau of <b>NARCOTICS</b> and Dangerous Drugs Control	475	Board of Examiners for <b>SPEECH-LANGUAGE</b> Pathology and Audiology	690
Board of Regents of <b>NORTHERN</b> Oklahoma College	480	<b>STATE</b> Agency Review Committee	695
Oklahoma Board of <b>NURSING</b>	485	<b>STATE</b> Use Committee ( <i>Formerly: Committee on Purchases of Products and Services of the Severely HANDICAPPED</i> ) – See Title 304	
Oklahoma State Board of Examiners for <b>NURSING</b> Home Administrators	490	Oklahoma <b>STUDENT</b> Loan Authority	700
Board of Regents of <b>OKLAHOMA</b> City Community College	495	<b>TASK</b> Force 2000	705
Board of Regents of <b>OKLAHOMA</b> Colleges	500	Oklahoma <b>TAX</b> Commission	710
Board of Examiners in <b>OPTOMETRY</b>	505	Oklahoma Commission for <b>TEACHER</b> Preparation	712
State Board of <b>OSTEOPATHIC</b> Examiners	510	<b>TEACHERS'</b> Retirement System	715
<b>PARDON</b> and Parole Board	515	State <b>TEXTBOOK</b> Committee	720
Oklahoma <b>PEANUT</b> Commission	520	Oklahoma <b>TOURISM</b> and Recreation Department	725
Oklahoma State <b>PENSION</b> Commission	525	Department of <b>TRANSPORTATION</b>	730
State Board of Examiners of <b>PERFUSIONISTS</b>	527	Oklahoma <b>TRANSPORTATION</b> Authority	731
Office of <b>PERSONNEL</b> Management	530	State <b>TREASURER</b>	735
Oklahoma State Board of <b>PHARMACY</b>	535	Board of Regents of <b>TULSA</b> Community College	740
<b>PHYSICIAN</b> Manpower Training Commission	540	Oklahoma <b>TURNPIKE</b> Authority ( <i>name changed - see Title 731</i> )	745
Board of <b>PODIATRIC</b> Medical Examiners	545	Board of Trustees for the <b>UNIVERSITY</b> Center at Tulsa	750
Oklahoma <b>POLICE</b> Pension and Retirement System	550	<b>UNIVERSITY</b> Hospitals Authority	752
State Department of <b>POLLUTION</b> Control ( <i>abolished 1-1-93</i> )	555	Board of Regents of the <b>UNIVERSITY</b> of Oklahoma	755
<b>POLYGRAPH</b> Examiners Board	560	Board of Regents of the <b>UNIVERSITY</b> of Science and Arts of Oklahoma	760
Oklahoma Board of <b>PRIVATE</b> Vocational Schools	565	Oklahoma <b>USED</b> Motor Vehicle and Parts Commission	765
State Board for <b>PROPERTY</b> and Casualty Rates	570	Oklahoma Department of <b>VETERANS</b> Affairs	770
State Board of Examiners of <b>PSYCHOLOGISTS</b>	575	Board of <b>VETERINARY</b> Medical Examiners	775
Department of <b>CENTRAL</b> Services ( <i>Formerly: Office of PUBLIC Affairs</i> )	580	Oklahoma Department of <b>CAREER</b> and Technology Education ( <i>Formerly: Oklahoma Department of VOCATIONAL and Technical Education</i> )	780
<b>PUBLIC</b> Employees Relations Board	585	Oklahoma <b>WATER</b> Resources Board	785
Oklahoma <b>PUBLIC</b> Employees Retirement System	590	Board of Regents of <b>WESTERN</b> Oklahoma State College	790
Department of <b>PUBLIC</b> Safety	595	Oklahoma <b>WHEAT</b> Commission	795
<b>REAL</b> Estate Appraiser Board	600	Department of <b>WILDLIFE</b> Conservation	800
Oklahoma <b>REAL</b> Estate Commission	605	<b>WILL</b> Rogers and J.M. Davis Memorials Commission	805
Board of Regents of <b>REDLANDS</b> Community College	607		
State <b>REGENTS</b> for Higher Education	610		
State Department of <b>REHABILITATION</b> Services	612		
Board of Regents of <b>ROGERS</b> State College	615		



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# Notices of Rulemaking Intent

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

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

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

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## TITLE 720. STATE TEXTBOOK COMMITTEE CHAPTER 10. TEXTBOOK SELECTION

*[OAR Docket #03-633]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions

720:10-1-2. Definitions [AMENDED]

Subchapter 3. Bidding Procedures

720-10-3-1. Letters of Intent to bid [AMENDED]

720:10-3-3. Information necessary to complete bid  
[AMENDED]

720:10-3-5. Materials to be considered for adoption  
[AMENDED]

720:10-3-6. Ancillary and supplementary items  
[AMENDED]

720:10-3-7. Free Materials [AMENDED]

### **SUMMARY:**

The purposes of the rule changes are to clarify and update the terminology of the definitions of materials bid by publishers for the purpose of adoption. The rule changes will also clarify which samples need to be sent to the State Textbook Committee and to the Congressional District Review Centers, and will ensure that samples are displayed and disposed of properly.

### **AUTHORITY:**

Article XIII, section 6 of the Oklahoma Constitution and 70 O.S. § 16-118; State Textbook Committee

### **COMMENT PERIOD:**

All interested persons are invited to submit data, views, or comments, orally or in writing, in support or opposition to the amendments, by June 16, 2003, to the Instructional Materials section of the State Department of Education, Room 3-12, Oliver Hodge Memorial Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105-4599.

### **PUBLIC HEARING:**

A public hearing has not been scheduled. However, pursuant to 75 O.S., Section 303 (B) (9), "persons may demand a hearing" by contacting Paige Phillips at (405) 521-3343 no later than 4:30 p.m. on June 16, 2003.

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

Business entities affected by these proposed rules are requested to provide the State Textbook Committee with information, in dollar amounts if possible, about any 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 Paige Phillips at the above address no later than June 16, 2003.

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

Copies of proposed rules may be obtained from the Instructional Materials section of the State Department of Education, Room 3-12, Oliver Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies may also be obtained by written request mailed to the attention of Paige Phillips, Instructional Materials section of the State Department of Education, Room 3-12, Oliver Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

### **RULE IMPACT STATEMENT:**

A Rule Impact Statement for the amendments will be prepared as required by law, and will be available after May 29, 2003 at the Instructional Materials section of the State Department of Education, Room 3-12, Oliver Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

### **CONTACT PERSON:**

Paige Phillips, (405) 521-3456

*[OAR Docket #03-633; filed 4-11-03]*

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# Submissions for Review

Within 10 calendar days after adoption by an agency of a proposed PERMANENT rulemaking action, the agency must submit the proposed rules to the Governor and the Legislature for review. In addition, the agency must publish in the *Register* a "statement" that the rules have been submitted for gubernatorial/legislative review.

*For additional information on submissions for gubernatorial/legislative review, see 75 O.S., Section 303.1, 303.2, and 308.*

## TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

*[OAR Docket #03-648]*

### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

### **RULES:**

Subchapter 1. General Provisions

Part 1. General

165:5-1-4. Office location; office hours; records  
[AMENDED]

165:5-1-5. Filing of documents [AMENDED]

Subchapter 5. Dockets

165:5-5-1. Dockets; identifying initials [AMENDED]

Subchapter 7. Commencement of a Cause

Part 1. General

165:5-7-1. General application and notice requirements  
[AMENDED]

Part 3. Oil and Gas

165:5-7-14. ~~Enhanced recovery gross production tax exemption~~ Tax exemptions pursuant to OAC 165:10. Subchapter 21 [AMENDED]

165:5-7-27. Enhancement or addition of injection and disposal wells [AMENDED]

Subchapter 9. Subsequent Pleadings

165:5-9-2. Subsequent pleadings [AMENDED]

165:5-9-6. Continuances [AMENDED]

Subchapter 11. Prehearing Procedures

165:5-11-2.1. Initial screening conference ("ISC") [NEW]

Subchapter 13. Initial and Appellate Proceedings

165:5-13-2.1. Appointment of Public Utility Referee  
[NEW]

165:5-13-4. Report of Administrative Law Judge  
[AMENDED]

Subchapter 19. Contempt

165:5-19-2. Waiver or reduction of fines and penalties upon small business [NEW]

### **SUBMITTED TO GOVERNOR:**

April 1, 2003

### **SUBMITTED TO HOUSE:**

April 1, 2003

### **SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-648; filed 4-16-03]*

## TITLE 165. CORPORATION COMMISSION CHAPTER 55. TELECOMMUNICATIONS SERVICES

*[OAR Docket #03-649]*

### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

### **RULES:**

Subchapter 1. General Provisions

165:55-1-4. Definitions [AMENDED]

Subchapter 3. Certificates, Reports and Records

Part 1. Certificates of Convenience and Necessity

165:55-3-1. Certificate of Convenience and Necessity  
[AMENDED]

Part 5. Record Requirements

165:55-3-22. Records to be provided to the Commission  
[AMENDED]

Subchapter 5. Rates and Tariffs

Part 3. Approval and Notice Requirements

165:55-5-10. Tariff approval and revisions to tariffs  
[AMENDED]

165:55-5-10.2. Promotional offerings [AMENDED]

165:55-5-10.3. Customer-specific contracts under ICB pricing [AMENDED]

Part 5. Tariff Structure and Composition

165:55-5-21. Composition of tariffs [AMENDED]

Part 7. Miscellaneous Tariff Requirements

165:55-5-34. Data and information on proposed tariff revisions [AMENDED]

Subchapter 7. Directories, Telephone Numbers, and Customer-Provided Equipment

165:55-7-2.1. 211 Services [NEW]

Subchapter 9. Customer Billing and Deposits

Part 1. Billing and Payment Requirements

165:55-9-3. Due date and penalty [AMENDED]

Subchapter 11. Service Denial, Suspension and Disconnection

Part 3. Suspension and Disconnection Procedures

165:55-11-13. Reconnection [AMENDED]

Subchapter 13. Operating and Maintenance Requirements

Part 3. Service Standards

165:55-13-10. Minimum service standards [AMENDED]

Part 5. Service Quality Standards

165:55-13-20. Responsibility for adequate and safe service  
[AMENDED]

Subchapter 15. Notification of Transactions Affecting Customers or Business Operations

165:55-15-5. Cessation of business in Oklahoma  
[AMENDED]

## Submissions for Review

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Subchapter 17. Facilitation of Local Exchange Competition  
165:55-17-3. Designation of service territory  
[AMENDED]

165:55-17-13. Interconnection of networks [AMENDED]

165:55-17-30. Customer choice [NEW]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-649; filed 4-16-03]*

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**TITLE 165. CORPORATION COMMISSION  
CHAPTER 56. RESELLERS  
OF INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES**

*[OAR Docket #03-650]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 5. Tariffs

165:56-5-2. Information to be included in tariffs  
[AMENDED]

165:56-5-5 Revisions to tariffs [AMENDED]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-650; filed 4-16-03]*

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**TITLE 165. CORPORATION COMMISSION  
CHAPTER 59. OKLAHOMA UNIVERSAL  
SERVICE AND LIFELINE**

*[OAR Docket #03-651]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 1. General Provisions

165:59-1-4. Definitions [AMENDED]

Subchapter 3. Oklahoma Universal Service Fund

Part 5. Administration of the OUSF

165:59-3-30. Administration of the Fund [AMENDED]

Part 9. Requests for OUSF Funding

165:59-3-62. Procedures for requesting funding from the  
OUSF [AMENDED]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-651; filed 4-16-03]*

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**TITLE 165. CORPORATION COMMISSION  
CHAPTER 65. WATER SERVICE UTILITIES**

*[OAR Docket #03-652]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 1. General Provisions

165:65-1-2. Definitions [AMENDED]

165:65-1-5. Relief from rules of this Chapter and rules by  
utilities [AMENDED]

Subchapter 3. Plant, Equipment, and Facilities

165:65-3-1. Construction and maintenance of plant,  
equipment, and facilities [AMENDED]

165:65-3-2. Extent of system in which utility shall maintain  
service [AMENDED]

Subchapter 5. Water Quality, Testing, and Pressure

165:65-5-2. Water analyses and records [AMENDED]

Subchapter 7. Meter Requirements and Testing

Part 1. General Provisions

165:65-7-4. Information as to reading of meters  
[AMENDED]

Part 3. Testing

165:65-7-11. Periodic and routine tests [AMENDED]

Subchapter 11. Customer Service

Part 1. Deposits And Billing

165:65-11-3. Deposits and interest [AMENDED]

Part 3. Disconnection Of Service [AMENDED]

165:65-11-10. Disconnection of service by a consumer  
[AMENDED]

165:65-11-11. Disconnection of service by a utility  
[AMENDED]

165:65-11-12. Insufficient reasons for disconnection of  
service [REVOKED]

165:65-11-13. Notice of disconnection of service  
[AMENDED]

165:65-11-14. Commission notification procedure for  
elderly and/or ~~handicapped~~ consumers with disabilities  
[AMENDED]

165:65-11-15. Delays to disconnection of residential  
service [AMENDED]

165:65-11-16. Reconnection of service [AMENDED]

165:65-11-17. Mediation [AMENDED]

165:65-11-18. Commission review [AMENDED]

165:65-11-19. Utilities encouraged to keep current lists of utility assistance programs [NEW]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-652; filed 4-16-03]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 75. COTTON GIN UTILITIES**

*[OAR Docket #03-653]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 3. Applications

165:75-3-1. Filing of application [AMENDED]

165:75-3-2. Notification [AMENDED]

165:75-3-4. New gins [AMENDED]

165:75-3-5. Dormant gins [AMENDED]

165:75-3-6. Dismantled gins [AMENDED]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-653; filed 4-16-03]*

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

*[OAR Docket #03-741]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

304:10-1-2 through 304:10-1-5 [AMENDED]

304:10-1-8 [AMENDED]

304:10-1-10 through 304:10-1-11 [AMENDED]

304:10-1-12 [NEW]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-741; filed 4-23-03]*

**TITLE 460. DEPARTMENT OF MINES  
CHAPTER 2. RULES OF PRACTICE  
AND PROCEDURE FOR THE COAL  
RECLAMATION ACT OF 1979**

*[OAR Docket #03-609]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 9. Review of Section 776 and 777 Notices of Violation and Orders of Cessation

460:2-9-4. [AMENDED]

**SUBMITTED TO GOVERNOR:**

March 31, 2003

**SUBMITTED TO HOUSE:**

March 31, 2003

**SUBMITTED TO SENATE:**

March 31, 2003

*[OAR Docket #03-609; filed 4-9-03]*

**TITLE 460. DEPARTMENT OF MINES  
CHAPTER 10. NON-COAL RULES AND  
REGULATIONS**

*[OAR Docket #03-610]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 9. General Requirements for Permits And Applications

460:10-9-5 [AMENDED]

Subchapter 15. Non-Coal Mining Permit Applications Requirements for Reclamation and Operations Plan

460:10-15-3 [AMENDED]

**SUBMITTED TO GOVERNOR:**

March 31, 2003

**SUBMITTED TO HOUSE:**

March 31, 2003

**SUBMITTED TO SENATE:**

March 31, 2003

*[OAR Docket #03-610; filed 4-9-03]*

## Submissions for Review

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

*[OAR Docket #03-611]*

#### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

#### **RULES:**

Subchapter 33. Requirements for permits for special categories of Mining  
460:20-33-12 [AMENDED]

#### **SUBMITTED TO GOVERNOR:**

March 31, 2003

#### **SUBMITTED TO HOUSE:**

March 31, 2003

#### **SUBMITTED TO SENATE:**

March 31, 2003

*[OAR Docket #03-611; filed 4-9-03]*

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### **TITLE 460. DEPARTMENT OF MINES CHAPTER 25. OKLAHOMA EXPLOSIVES AND BLASTING REGULATIONS**

*[OAR Docket #03-612]*

#### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

#### **RULES:**

Subchapter 9. Permit Revisions and Renewals  
460:25-9-5 [AMENDED]  
Subchapter 10. Permit Exemptions  
460:25-10-9 [AMENDED]  
460:25-10-10 [AMENDED]  
460:25-10-12 [AMENDED]

#### **SUBMITTED TO GOVERNOR:**

March 31, 2003

#### **SUBMITTED TO HOUSE:**

March 31, 2003

#### **SUBMITTED TO SENATE:**

March 31, 2003

*[OAR Docket #03-612; filed 4-9-03]*

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### **TITLE 460. DEPARTMENT OF MINES CHAPTER 30. COAL COMBUSTION BY-PRODUCT STANDARDS**

*[OAR Docket #03-613]*

#### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

#### **RULES:**

Chapter 30. Coal Combustion By-Product Standards  
[NEW]

#### **SUBMITTED TO GOVERNOR:**

March 31, 2003

#### **SUBMITTED TO HOUSE:**

March 31, 2003

#### **SUBMITTED TO SENATE:**

March 31, 2003

*[OAR Docket #03-613; filed 4-9-03]*

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

*[OAR Docket #03-628]*

#### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review.

#### **RULES:**

Subchapter 1. General Provisions  
Part 1. General Provisions  
530:10-1-2. [AMENDED]  
530:10-1-6. [AMENDED]  
Subchapter 3. Affirmative Action and Equal Employment Opportunity  
Part 2. Discrimination Complaints Investigations  
530:10-3-22. [AMENDED]  
Part 5. Noncompliance, Investigations, Hearings, and Remedies  
530:10-3-52. [AMENDED]  
Subchapter 7. Salary and Payroll  
Part 1. Salary and Rates of Pay  
530:10-7-14. [AMENDED]  
530:10-7-16. [NEW]  
530:10-7-22. [AMENDED]  
Subchapter 13. Reduction-in-Force  
Part 1. General Provisions for Reduction-in-Force  
530:10-13-2. [AMENDED]  
Part 7. Priority Consideration for Reemployment  
530:10-13-70. [AMENDED]  
Subchapter 17. Employee Performance Management System and Career Enhancement Programs  
Part 3. Employee Performance Management System  
530:10-17-31. [AMENDED]  
Part 17. State Work Incentive Program  
530:10-17-173. [AMENDED]  
Subchapter 23. Employee Recognition [NEW]  
Part 1. General Provisions [NEW]  
530:10-23-1. [NEW]  
530:10-23-2. [RESERVED]  
530:10-23-3. [NEW]

Appendix B. Schedule of Annual and Sick Leave Accrual Rates and Accumulation Limits [NEW]

**SUBMITTED TO GOVERNOR:**

March 31, 2003

**SUBMITTED TO HOUSE:**

March 31, 2003

**SUBMITTED TO SENATE:**

March 31, 2003

*[OAR Docket #03-628; filed 4-9-03]*

**TITLE 580. DEPARTMENT OF CENTRAL SERVICES  
CHAPTER 10. FACILITIES MANAGEMENT**

*[OAR Docket #03-745]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 1. Use of Public Areas of Capitol Building and Plazas [REVOKED]

Subchapter 2. General Provisions [NEW]

580:10-2-1 through 10-2-5 [NEW]

Subchapter 5. Use of Public Areas of Capitol and Plazas [NEW]

580:10-5-1 through 10-5-8 [NEW]

Subchapter 7. Use of State Capitol Park [NEW]

580:10-7-1 through 10-7-3 [NEW]

Subchapter 9. Operation of Buildings Owned, Used or Occupied by or on Behalf of the State [NEW]

Part 1. Smoking [NEW]

580:10-9-1 through 10-9-4 [NEW]

Part 3. Use of Capitol Conference Center and the Concourse Theater [NEW]

580:10-9-8 through 10-9-10 [NEW]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-745; filed 4-23-03]*

**TITLE 580. DEPARTMENT OF CENTRAL SERVICES  
CHAPTER 15. CENTRAL PURCHASING**

*[OAR Docket #03-742]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 2. General Provisions

580:15-2-2 [AMENDED]

580:15-2-6 [AMENDED]

580:15-2-7 [AMENDED]

580:15-2-11 [AMENDED]

Subchapter 4. Supplier Provisions

580:15-4-2 [AMENDED]

580:15-4-5 [AMENDED]

580:15-4-7 [AMENDED]

580:15-4-8 [AMENDED]

580:15-4-10 through 15-4-14 [AMENDED]

580:15-4-17 through 15-4-19 [AMENDED]

Subchapter 6. State Agency Provisions

580:15-6-1 through 15-6-5 [AMENDED]

580:15-6-8 through 15-6-11 [AMENDED]

580:15-6-13 [AMENDED]

580:15-6-15 [AMENDED]

580:15-6-17 [AMENDED]

580:15-6-18 [NEW]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-742; filed 4-23-03]*

**TITLE 580. DEPARTMENT OF CENTRAL SERVICES  
CHAPTER 20. CONSTRUCTION AND PROPERTIES**

*[OAR Docket #03-746]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 1. Bidding Procedures

580:20-1-1 through 165:20-1-6. [AMENDED]

580:20-1-8. [REVOKED]

580:20-1-8.1 [NEW]

580:20-1-9 [AMENDED]

580:20-1-12 through 165:20-1-13 [AMENDED]

580:20-1-16 [AMENDED]

580:20-1-18 [AMENDED]

Subchapter 3. Selection of Architects, Engineers, And Other Design Consultants

580:20-3-2 [AMENDED]

580:20-3-4 through 20-3-7 [AMENDED]

Subchapter 5. Minimum Codes for State Construction

580:20-5-2 [AMENDED]

Subchapter 7. Procedures for Agencies to Perform Responsibilities Exercised by the Construction and Properties Division

580:20-7-2 [AMENDED]

## Submissions for Review

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580:20-7-4 [AMENDED]  
Subchapter 9. Full-Time Employment by Agencies for  
Minor Construction Projects  
580:20-9-2 [AMENDED]  
Subchapter 15. Energy Services Contracts  
580:20-15-2 [AMENDED]  
Subchapter 17. Construction Management Procedures and  
Requirements [NEW]  
580:20-17-1 through 580:20-17-9 [NEW]  
Subchapter 19. Design-Build Procedures and  
Requirements [NEW]  
580:20-19-1 through 580:20-19-13 [NEW]  
Subchapter 21. Selection of Construction Management and  
Design-Build Firms [NEW]  
580:20-21-1 through 580:20-21-8 [NEW]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-746; filed 4-23-03]*

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**TITLE 580. DEPARTMENT OF CENTRAL  
SERVICES  
CHAPTER 30. MOTOR POOL DIVISION  
[REVOKED]**

*[OAR Docket #03-744]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

580:30-1-1 through 30-1-10 [REVOKED]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-744; filed 4-23-03]*

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**TITLE 580. DEPARTMENT OF CENTRAL  
SERVICES  
CHAPTER 35. FLEET MANAGEMENT  
DIVISION**

*[OAR Docket #03-748]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

580:35-1-1 through 580:35-1-3 [AMENDED]

580:35-1-4 through 580:35-1-10 [NEW]  
Appendix A. Fleet management inventory report  
[REVOKED]  
Appendix B. Fleet management monthly report  
[REVOKED]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-748; filed 4-23-03]*

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**TITLE 580. DEPARTMENT OF CENTRAL  
SERVICES  
CHAPTER 65. STATE SURPLUS PROPERTY**

*[OAR Docket #03-743]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 1. General Provisions

580:65-1-1 through 65:1-2. [AMENDED]

580:65-1-3 through 65-1-6. [REVOKED]

580:65-1-9 through 65-1-12 [NEW]

Subchapter 3. Declaration and Approval of Surplus  
Property [NEW]

580:65-3-1 through 65-3-4 [NEW]

Subchapter 5. Sale or Disposal of Surplus Property [NEW]

580:65-5-1 through 65-5-5 [NEW]

Subchapter 7. Acquisition of Surplus Property [NEW]

580:65-7-1 through 65-7-7 [NEW]

Subchapter 9. Surplus Property Records [NEW]

580:65-9-1 through 65-9-2 [NEW]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-743; filed 4-23-03]*

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**TITLE 580. DEPARTMENT OF CENTRAL  
SERVICES  
CHAPTER 70. STATE INVENTORY**

*[OAR Docket #03-747]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 1. General Provisions [NEW]

580:70-1-1 through 70-1-4 [NEW]  
Subchapter 3. Tangible Assets Reporting [NEW]  
580:70-3-1 through 70-3-6 [NEW]  
Subchapter 5. Tangible Assets Management [NEW]  
580:70-5-1 through 70-5-2 [NEW]

**SUBMITTED TO GOVERNOR:**

April 1, 2003

**SUBMITTED TO HOUSE:**

April 1, 2003

**SUBMITTED TO SENATE:**

April 1, 2003

*[OAR Docket #03-747; filed 4-23-03]*

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 1. ADMINISTRATIVE**

*[OAR Docket #03-668]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 7. Rules of Operation  
610:1-7-23. Petition requesting promulgation, amendment, or repeal of rules; form and procedure [NEW]  
610:1-7-24. Petitions for declaratory rulings; form and procedure [NEW]

**SUBMITTED TO GOVERNOR:**

April 4, 2003

**SUBMITTED TO HOUSE:**

April 4, 2003

**SUBMITTED TO SENATE:**

April 4, 2003

*[OAR Docket #03-668; filed 4-17-03]*

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

*[OAR Docket #03-667]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 1. Academic Scholars Program  
610:25-1-3. General principles for operation of program [AMENDED]  
610:25-1-4. Eligibility Requirements and Term of Scholarship Award [AMENDED]  
610:25-1-7. Fiscal aspects of program [AMENDED]

**SUBMITTED TO GOVERNOR:**

April 4, 2003

**SUBMITTED TO HOUSE:**

April 4, 2003

**SUBMITTED TO SENATE:**

April 4, 2003

*[OAR Docket #03-667; filed 4-17-03]*

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

*[OAR Docket #03-669]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 9. Future Teachers' Scholarship Program  
610:25-9-2. Eligibility [AMENDED]

**SUBMITTED TO GOVERNOR:**

April 4, 2003

**SUBMITTED TO HOUSE:**

April 4, 2003

**SUBMITTED TO SENATE:**

April 4, 2003

*[OAR Docket #03-669; filed 4-17-03]*

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

*[OAR Docket #03-670]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 23. Oklahoma Higher Learning Access Program (OHLAP)  
610:25-23-2. Eligibility of participants [AMENDED]  
610:25-23-3. Applications [AMENDED]  
610:25-23-4. Program requirements [AMENDED]  
610:25-23-5. Securing OHLAP benefits [AMENDED]  
610:25-23-8. Administrative responsibilities [AMENDED]

**SUBMITTED TO GOVERNOR:**

April 4, 2003

**SUBMITTED TO HOUSE:**

April 4, 2003

**SUBMITTED TO SENATE:**

April 4, 2003

*[OAR Docket #03-670; filed 4-17-03]*

## Submissions for Review

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### **TITLE 610. STATE REGENTS FOR HIGHER EDUCATION CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

*[OAR Docket #03-671]*

#### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

#### **RULES:**

- Subchapter 7. Oklahoma Tuition Aid Grant Program
- 610:25-7-2. Legislative authority [AMENDED]
- 610:25-7-3. Administration of grants and payments [AMENDED]
- 610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds [AMENDED]
- 610:25-7-9. Authorized institutional representative [NEW]
- 610:25-7-10. Refunds and institutional liability [NEW]

#### **SUBMITTED TO GOVERNOR:**

April 4, 2003

#### **SUBMITTED TO HOUSE:**

April 4, 2003

#### **SUBMITTED TO SENATE:**

April 4, 2003

*[OAR Docket #03-671; filed 4-17-03]*

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### **TITLE 610. STATE REGENTS FOR HIGHER EDUCATION CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

*[OAR Docket #03-672]*

#### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

#### **RULES:**

- Subchapter 29. Tulsa Reconciliation Education Scholarship Act
- 610:25-29-1. Purpose [AMENDED]
- 610:25-29-2. Definitions [AMENDED]
- 610:25-29-3. Eligibility Requirements [AMENDED]
- 610:25-29-4. Principles for awards, continuation of awards, disbursements, refunds, and applications [AMENDED]
- 610:25-29-5. Trust funds [AMENDED]

#### **SUBMITTED TO GOVERNOR:**

April 4, 2003

#### **SUBMITTED TO HOUSE:**

April 4, 2003

#### **SUBMITTED TO SENATE:**

April 4, 2003

*[OAR Docket #03-672; filed 4-17-03]*

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# Gubernatorial Approvals

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

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

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

*[OAR Docket #03-712]*

### **RULEMAKING ACTION:**

Gubernatorial approval

### **RULES:**

Appendix A. Fine Matrix [NEW]

### **GUBERNATORIAL APPROVAL:**

April 14, 2003

*[OAR Docket #03-712; filed 4-21-03]*

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

*[OAR Docket #03-713]*

### **RULEMAKING ACTION:**

Gubernatorial approval

### **RULES:**

Subchapter 3. Animal Health Reportable Diseases

35:15-3-1 [AMENDED]

35:15-3-2 [NEW]

35:15-3-3 [NEW]

### **GUBERNATORIAL APPROVAL:**

April 14, 2003

*[OAR Docket #03-713; filed 4-21-03]*

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

*[OAR Docket #03-714]*

### **RULEMAKING ACTION:**

Gubernatorial approval

### **RULES:**

Subchapter 9. Livestock Dealers and Livestock Special Sales

Part 3. Livestock Special Sales

35:15-9-11 [NEW]

### **GUBERNATORIAL APPROVAL:**

April 14, 2003

*[OAR Docket #03-714; filed 4-21-03]*

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

*[OAR Docket #03-715]*

### **RULEMAKING ACTION:**

Gubernatorial approval

### **RULES:**

Subchapter 21. Swine Pseudorabies [REVOKED]

35:15-21-1 through 35:15-21-20 [REVOKED]

Subchapter 22. Swine Pseudorabies [NEW]

Part 1. General Provisions [NEW]

35:15-21-1 [NEW]

Part 3. Requirements for Swine Entering Oklahoma [NEW]

35:15-22-31 through 35:15-22-35 [NEW]

Part 5. Requirements for a Qualified Pseudorabies Negative Herd [NEW]

35:15-22-51 through 35:15-22-53 [NEW]

Part 7. Requirements for Swine Exhibitions [NEW]

35:15-22-71 [NEW]

Part 9. Requirements for Approved Markets [NEW]

35:15-22-91 [NEW]

Part 11. Pseudorabies Testing, Vaccine, and Quarantine Procedures [NEW]

35:15-22-110 through 35:15-22-115 [NEW]

Part 13. Violations of Requirements for Testing or Movement of Swine Into or Within the State of Oklahoma [NEW]

35:15-22-131 [NEW]

### **GUBERNATORIAL APPROVAL:**

April 14, 2003

*[OAR Docket #03-715; filed 4-21-03]*

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

*[OAR Docket #03-716]*

### **RULEMAKING ACTION:**

Gubernatorial approval

### **RULES:**

Subchapter 25. Meat Inspection

## Gubernatorial Approvals

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Part 1. General Provisions

35:15-25-1 [AMENDED]

35:15-25-3 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 14, 2003

*[OAR Docket #03-716; filed 4-21-03]*

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**RULES:**

Subchapter 17. Combined Pesticide

Part 22. Wood Infestation Reports [NEW]

35:30-17-100 through 35:30-17-107 [NEW]

**GUBERNATORIAL APPROVAL:**

April 14, 2003

*[OAR Docket #03-719; filed 4-21-03]*

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

*[OAR Docket #03-717]*

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

*[OAR Docket #03-720]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 47. Chronic Wasting Disease (CWD) in Cervids  
Cervidae

Part 7. Interstate Movement Requirements

35:15-47-19 [NEW]

**GUBERNATORIAL APPROVAL:**

April 14, 2003

*[OAR Docket #03-717; filed 4-21-03]*

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**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. General Provisions

35:35-1-2 [AMENDED]

35:35-1-3 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 14, 2003

*[OAR Docket #03-720; filed 4-21-03]*

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

*[OAR Docket #03-718]*

**TITLE 35. OKLAHOMA DEPARTMENT OF  
AGRICULTURE, FOOD, AND FORESTRY  
CHAPTER 50. AQUACULTURE**

*[OAR Docket #03-721]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 17. Forest Resources Development Program  
[NEW]

Part 1. General Provisions [NEW]

35:20-17-1 through 35:20-17-3 [NEW]

Part 3. Cost-Share Program Guidelines [NEW]

35:20-17-7 through 35:20-17-23 [NEW]

**GUBERNATORIAL APPROVAL:**

April 14, 2003

*[OAR Docket #03-718; filed 4-21-03]*

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**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. Private Commercial Production [NEW]

Part 1. General Provisions [NEW]

35:50-1-1 [NEW]

35:50-1-2 [NEW]

Part 3. Licensing, Reporting, and Records [NEW]

35:50-1-30 through 35:50-1-38 [NEW]

**GUBERNATORIAL APPROVAL:**

April 14, 2003

*[OAR Docket #03-721; filed 4-21-03]*

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**TITLE 35. OKLAHOMA DEPARTMENT OF  
AGRICULTURE, FOOD, AND FORESTRY  
CHAPTER 30. PLANT INDUSTRY**

*[OAR Docket #03-719]*

**RULEMAKING ACTION:**

Gubernatorial approval

**TITLE 85. STATE BANKING DEPARTMENT  
CHAPTER 10. SUPERVISION,  
REGULATION AND ADMINISTRATION OF  
BANKS AND THE OKLAHOMA BANKING  
CODE**

[OAR Docket #03-736]

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 5. Requirements, Standards and Procedures for an Internal Control Program

85:10-5-3. Minimum control elements for bank internal control program [AMENDED]

85:10-5-3.1 Internal control program for fiduciary activities of trust departments and trust companies [NEW]

**GUBERNATORIAL APPROVAL:**

April 10, 2003

[OAR Docket #03-736; filed 4-23-03]

**TITLE 170. DEPARTMENT OF  
CORRECTIONS  
CHAPTER 25. COMMUNITY SENTENCING**

[OAR Docket #03-725]

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. General Provisions

170:25-1-4. [AMENDED]

Subchapter 3. Application and Approval

170:25-3-1 [AMENDED]

170:25-3-3 [AMENDED]

Subchapter 5. Plan Administration

170:25-5-1 [AMENDED]

170:25-5-2 [AMENDED]

170:25-5-3 [AMENDED]

Subchapter 9. Fiscal Management

170:25-9-5 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 15, 2003

[OAR Docket #03-725; filed 4-22-03]

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

[OAR Docket #03-620]

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 3. Election Personnel

Part 1. The County Election Board

230:10-3-8. Salary of the Secretary [AMENDED]

Subchapter 7. General Administration of the County Election Board

Part 7. Public Records

230:10-7-59. Public records [AMENDED]

Part 9. Finances

230:10-7-76. Special Depository Account [AMENDED]

230:10-7-82. Expenses paid through Special Depository Account [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 24, 2003

[OAR Docket #03-620; filed 4-9-03]

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

[OAR Docket #03-621]

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 3. Voter Outreach

Part 3. Distribution of Voter Registration Application Forms

230:15-3-24. Voter registration application forms available in quantity for organized voter registration programs [AMENDED]

230:15-3-26. Requests for more than ~~1,000~~ 5,000 Oklahoma Voter Registration Application forms [AMENDED]

Subchapter 5. Application for Voter Registration

Part 17. Public Records

230:15-5-73. All registration records public [AMENDED]

Part 21. Voter Registration Application by Mail

230:15-5-83.1. Voter registration for Address Confidentiality Program participants [NEW]

230:15-5-84. Information required on voter registration application [AMENDED]

Subchapter 9. ~~State Election Board and County Election Board Responsibilities for Receiving and Processing~~ Voter Registration Applications

Part 1. Responsibilities of the State Election Board for Voter Registration

230:15-9-3.1. Processing voter registration and absentee ballot requests from Address Confidentiality Program participants at the State Election Board [NEW]

Part 5. Processing Voter Registration Applications

230:15-9-18.1. Assigning voter registration addresses in the Street Guide [AMENDED]

230:15-9-25. Processing applications for restricted records status [NEW]

# Gubernatorial Approvals

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Subchapter 11. Voter Registration List Maintenance  
Part 1. Cancellation of Voter Registration  
230:15-11-6. Cancellation of registration of deceased voter  
by next of kin [AMENDED]

**GUBERNATORIAL APPROVAL:**  
March 24, 2003

*[OAR Docket #03-621; filed 4-9-03]*

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

*[OAR Docket #03-622]*

### **RULEMAKING ACTION:**

Gubernatorial approval

### **RULES:**

Subchapter 3. Filing for State and County Office  
Part 7. Procedure for Filing  
230:20-3-35. Declarations must be notarized [AMENDED]  
230:20-3-37. Checking Declarations [AMENDED]  
230:20-3-39. Fee's, petitions attached [REVOKED]  
230:20-3-39.1. Filing fees deposited in Special Depository  
Account [NEW]  
Part 9. Withdrawals of Candidates  
230:20-3-48. Filing fee forfeited upon withdrawal  
[AMENDED]  
Part 13. ~~Return-Refund~~ of Filing Fees [AMENDED]  
230:20-3-61. Conditions for ~~return-refund~~ of filing fees  
[AMENDED]  
230:20-3-62. ~~Return-Refund~~ of filing fees for Independent  
candidates [AMENDED]  
230:20-3-63. Procedure for ~~return-refund~~ of filing fees  
[AMENDED]  
230:20-3-64. Time for ~~return-refund~~ of filing fees  
[AMENDED]  
230:20-3-65. Forfeited filing fees [AMENDED]  
Subchapter 5. Contests of Candidacy  
230:20-5-15. Filing fee forfeited when candidacy is  
stricken [AMENDED]

**GUBERNATORIAL APPROVAL:**  
March 24, 2003

*[OAR Docket #03-622; filed 4-9-03]*

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## TITLE 230. STATE ELECTION BOARD CHAPTER 25. BALLOT PRINTING

*[OAR Docket #03-623]*

### **RULEMAKING ACTION:**

Gubernatorial approval

### **RULES:**

Subchapter 7. Competitive Bidding Process for Ballot  
Printing

230:25-7-1. Competitive bidding required [AMENDED]  
230:25-7-4. Contract requirements [AMENDED]  
230:25-7-5. Printer's ~~bond~~ certificate of insurance  
[AMENDED]

**GUBERNATORIAL APPROVAL:**  
March 24, 2003

*[OAR Docket #03-623; filed 4-9-03]*

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

*[OAR Docket #03-624]*

### **RULEMAKING ACTION:**

Gubernatorial approval

### **RULES:**

Subchapter 1. General Provisions  
230:30-1-2. Definitions [NEW]  
Subchapter 3. Authorization for Absentee Voting  
230:30-3-3. Voters eligible for absentee ballots  
[AMENDED]  
230:30-3-4. Voters not eligible for services of nursing home  
Absentee Voting Board [NEW]  
Subchapter 5. Applications for Absentee Ballots  
230:30-5-8.1. Time for absentee ballot applications  
[AMENDED]  
Subchapter 7. Absentee Voting Boards  
230:30-7-6. Scheduling Absentee Voting Boards for an  
election [AMENDED]  
230:30-7-9. Procedure for the nursing home Absentee  
Voting Board [AMENDED]  
230:30-7-11.1. Preparation of polling place and voting  
device for in-person absentee voting [AMENDED]  
230:30-7-11.2. Assistance for the in-person Absentee  
Voting Board [AMENDED]  
230:30-7-11.3. Sheriff provides security for memory pack  
and voted ballots [AMENDED]  
230:30-7-13. In-person absentee voting procedure for  
military discharge or military leave voter [AMENDED]  
230:30-7-14. Verifying voter registration information and  
status of in-person absentee voters [AMENDED]  
Subchapter 9. Processing Applications  
230:30-9-3. Processing applications for absentee ballots  
[AMENDED]  
230:30-9-7. Absentee ballot applications for Address  
Confidentiality Program participants [NEW]  
Subchapter 11. Receiving and Processing Absentee Ballots  
230:30-11-1. ~~Handling of~~ Preparing absentee ballot box  
and handling outer envelopes [AMENDED]  
230:30-11-2. Opening outer envelopes and examining  
affidavits [AMENDED]  
230:30-11-3. Opening and storing properly executed  
affidavits [AMENDED]  
230:30-11-6. Transmitting absentee ballots [AMENDED]

- 230:30-11-7. Undeliverable absentee ballots returned by postal service to County Election Board [NEW]
- Subchapter 17. Replacement of Lost or Undelivered Absentee Ballot
- 230:30-17-1. Replacement of lost or undelivered absentee ballots [AMENDED]
- 230:30-17-2. Applications for ~~second set of replacement~~ absentee ballots [AMENDED]
- 230:30-17-3. Voter's agent [AMENDED]
- 230:30-17-4. Transmittal of ~~second set of replacement~~ absentee ballots [AMENDED]
- Subchapter 23. Suspected Violations of Absentee Voting Laws
- 230:30-23-1. Suspicious activities [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 24, 2003

*[OAR Docket #03-624; filed 4-9-03]*

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

*[OAR Docket #03-625]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

- Subchapter 3. County Election Board Responsibilities
- Part 17. Disposition of Materials
- 230:35-3-101. Processing Forms for use by Precinct Officials Booklets [AMENDED]
- Subchapter 5. Instructions for Precinct Election Officials
- Part 21. Problems with Eligibility
- 230:35-5-111. Voter whose name is not in Precinct Registry — Challenged Voter Procedure [AMENDED]
- 230:35-5-114. Military ~~discharge or military leave or Overseas Voter~~ [AMENDED]
- Part 25. Special Services
- 230:35-5-129. Cancellation of registration of deceased voter [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 24, 2003

*[OAR Docket #03-625; filed 4-9-03]*

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

*[OAR Docket #03-626]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

- Subchapter 1. General Provisions

- 230:40-1-2. Definitions [NEW]
- Subchapter 3. Special Elections
- Part 3. Vacancies
- 230:40-3-10. Vacancies in other county offices [AMENDED]
- 230:40-3-11. Irrevocable resignation of incumbent [NEW]
- Subchapter 7. School Elections
- Part 1. Date's for Annual School Election
- 230:40-7-1. Annual School Elections [AMENDED]
- 230:40-7-3. Resolution required [AMENDED]
- 230:40-7-4. Forms provided by the County Election Board [AMENDED]
- Part 7. Ballot Printing
- 230:40-7-26. Materials and ballots [AMENDED]
- 230:40-7-27. County Purchasing Agent obtains bids [REVOKED]
- Part 9. Procedures
- 230:40-7-34. General laws apply [AMENDED]
- 230:40-7-35. ~~Polling places~~ Precincts in school elections [AMENDED]
- 230:40-7-35.1. Procedure for closing split precinct in which 100 or fewer voters are registered in school district or technology center district [NEW]
- 230:40-7-37. Precinct Registries [AMENDED]
- 230:40-7-39. Absentee voting [AMENDED]
- Part 11. Special Elections
- 230:40-7-47. Notice of special election [AMENDED]
- 230:40-7-50. Closing precincts in special elections [REVOKED]
- 230:40-7-50.1. Notification letter [REVOKED]
- 230:40-7-50.2. County Election Board responsibilities for closed precincts [REVOKED]
- 230:40-7-50.3. Voting alternatives for voters in closed precincts [REVOKED]
- 230:40-7-51. Combining precincts in school elections [REVOKED]
- 230:40-7-51.1. Conditions that prohibit or limit combination of precincts [REVOKED]
- 230:40-7-51.2. Responsibilities of the school district superintendent [REVOKED]
- 230:40-7-51.3. Responsibilities of the County Election Board [REVOKED]
- Part 13. Expenses
- 230:40-7-56.1. Expenses for combined precincts [REVOKED]
- Part 23. Multi-County School Districts
- 230:40-7-97. Multi-county school districts [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 24, 2003

*[OAR Docket #03-626; filed 4-9-03]*

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

*[OAR Docket #03-627]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 3. Recounts

Part 7. Recounts for Question Elections

230:45-3-36. Petitions presumed valid [REVOKED]

230:45-3-36.1. Petitions verified [NEW]

**GUVERNATORIAL APPROVAL:**

March 24, 2003

*[OAR Docket #03-627; filed 4-9-03]*

**TITLE 245. STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL  
ENGINEERS AND LAND SURVEYORS  
CHAPTER 2. ADMINISTRATIVE  
OPERATIONS**

*[OAR Docket #03-607]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

245:2-1-6. [AMENDED]

245:2-1-10. [AMENDED]

245:2-1-16. [AMENDED]

245:2-1-18. [AMENDED]

**GUVERNATORIAL APPROVAL:**

March 24, 2003

*[OAR Docket #03-607; filed 4-8-03]*

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

*[OAR Docket #03-608]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 3. Application and Eligibility for Registration

245:15-3-2. [AMENDED]

245:15-3-7. [AMENDED]

245:15-3-10. [AMENDED]

Subchapter 5. Examinations

245:15-5-4. [AMENDED]

245:15-5-6. [AMENDED]

Subchapter 7. Registration

245:15-7-1. [AMENDED]

245:15-7-3. [AMENDED]

245:15-7-4. [AMENDED]

245:15-7-5. [AMENDED]

Subchapter 9. Rules of Professional Conduct

245:15-9-4. [AMENDED]

Subchapter 11. Continuing Education

245:15-11-1. [AMENDED]

245:15-11-7. [AMENDED]

245:15-11-8. [AMENDED]

245:15-11-9. [AMENDED]

245:15-11-11. [AMENDED]

Subchapter 19. Organizational Practice

245:15-19-2. [AMENDED]

245:15-19-3. [AMENDED]

245:15-19-4. [AMENDED]

245:15-19-7. [AMENDED]

Subchapter 23. Violations

245:15-23-2. [AMENDED]

245:15-23-9. [AMENDED]

245:15-23-22. [AMENDED]

**GUVERNATORIAL APPROVAL:**

March 24, 2003

*[OAR Docket #03-608; filed 4-8-03]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 6. ELECTRICAL HEARING  
BOARD PROCEDURES [REVOKED]**

*[OAR Docket #03-750]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

310:6-1-1 [REVOKED]

310:6-1-2 [REVOKED]

310:6-1-3 [REVOKED]

310:6-1-4 [REVOKED]

310:6-1-5 [REVOKED]

310:6-1-6 [REVOKED]

310:6-1-7 [REVOKED]

310:6-1-8 [REVOKED]

310:6-1-9 [REVOKED]

310:6-1-10 [REVOKED]

**GUVERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-750; filed 4-23-03]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 7. PLUMBING HEARING BOARD  
PROCEDURES [REVOKED]**

*[OAR Docket #03-751]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

310:7-1-1 [REVOKED]  
310:7-1-2 [REVOKED]  
310:7-1-3 [REVOKED]  
310:7-1-4 [REVOKED]  
310:7-1-5 [REVOKED]  
310:7-1-6 [REVOKED]  
310:7-1-7 [REVOKED]  
310:7-1-8 [REVOKED]  
310:7-1-9 [REVOKED]  
310:7-1-10 [REVOKED]

**GUVERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-751; filed 4-23-03]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 110. FEE AND FINE SCHEDULE  
FOR OCCUPATIONAL LICENSING**

*[OAR Docket #03-752]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. General Provisions  
310:110-1-1 [AMENDED]  
Subchapter 3. Fees  
310:110-3-2 [REVOKED]  
Subchapter 5. Administrative Fine Schedule  
310:110-5-1 [REVOKED]  
310:110-5-2 [REVOKED]  
310:110-5-3 [AMENDED]  
310:110-5-6 [NEW]  
310:110-5-7 [NEW]

**GUVERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-752; filed 4-23-03]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 234. MEDICAL  
MICROPIGMENTATION**

*[OAR Docket #03-753]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 3. Medical Micropigmentation Certification  
310:234-3-4 [AMENDED]  
310:234-3-5 [AMENDED]

**GUVERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-753; filed 4-23-03]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 245. ELECTRICAL INDUSTRY  
REGULATIONS [REVOKED]**

*[OAR Docket #03-754]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. General Provisions [REVOKED]  
310:245-1-1 [REVOKED]  
310:245-1-2 [REVOKED]  
310:245-1-3 [REVOKED]  
Subchapter 3. Procedures of the Committee, the  
Hearing Board, and the Variance and Appeals Board  
[REVOKED]  
310:245-3-1 [REVOKED]  
310:245-3-2 [REVOKED]  
310:245-3-3 [REVOKED]  
Subchapter 5. Licensing Requirements [REVOKED]  
310:245-5-1 [REVOKED]  
310:245-5-2 [REVOKED]  
310:245-5-3 [REVOKED]  
Subchapter 7. License Classifications [REVOKED]  
310:245-7-1 [REVOKED]  
310:245-7-2 [REVOKED]  
310:245-7-3 [REVOKED]  
310:245-7-4 [REVOKED]  
310:245-7-5 [REVOKED]  
Subchapter 9. Examinations and License Applications  
[REVOKED]  
310:245-9-1 [REVOKED]  
310:245-9-2 [REVOKED]  
310:245-9-3 [REVOKED]  
Subchapter 11. Prohibited Acts [REVOKED]  
310:245-11-1 [REVOKED]

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Subchapter 13. Plan Review and Code Variance  
Applications and Fees, and Code Appeals [REVOKED]  
310:245-13-1 [REVOKED]  
310:245-13-2 [REVOKED]  
310:245-13-3 [REVOKED]

**GUVERNATORIAL APPROVAL:**  
April 7, 2003

*[OAR Docket #03-754; filed 4-23-03]*

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### **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 256. FOOD SERVICE ESTABLISHMENT REGULATIONS ESTABLISHMENTS**

*[OAR Docket #03-755]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Chapter 256. Food Service ~~Establishment~~ Regulations  
Establishments [AMENDED]

**GUVERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-755; filed 4-23-03]*

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### **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 275. INSPECTOR REGULATIONS [REVOKED]**

*[OAR Docket #03-756]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. General Provisions [REVOKED]  
310:275-1-1 [REVOKED]  
310:275-1-2 [REVOKED]  
Subchapter 3. Inspector License Categories, Qualifications,  
Requirements, and Fees, Certification and Continuing  
Education [REVOKED]  
310:275-3-1 [REVOKED]  
310:275-3-2 [REVOKED]  
310:275-3-3 [REVOKED]  
310:275-3-4 [REVOKED]  
310:275-3-5 [REVOKED]

**GUVERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-756; filed 4-23-03]*

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### **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 276. HOME INSPECTION INDUSTRY**

*[OAR Docket #03-757]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. General Provisions [NEW]  
310:276-1-1 [NEW]  
310:276-1-2 [NEW]  
310:276-1-3 [NEW]  
Subchapter 3. Procedures of the Committee [NEW]  
310:276-3-1 [NEW]  
Subchapter 5. License Requirements. License Fees,  
License Period, Re-examination, Display and Insurance  
[NEW]  
310:276-5-1 [NEW]  
310:276-5-2 [NEW]  
Subchapter 9. Examination Applications, Examinations,  
Course Approval Requirements, Instructor  
Requirements, Continuing Education, Denied  
Application Appeal, Submission of Records, and  
Continuing Education Reciprocity [NEW]  
310:276-9-1 [NEW]  
310:276-9-2 [NEW]  
310:276-9-3 [NEW]  
310:276-9-4 [NEW]  
310:276-9-5 [NEW]  
310:276-9-6 [NEW]  
310:276-9-7 [NEW]  
310:276-9-8 [NEW]  
Subchapter 11. License Revocation and Suspension and  
Prohibited Acts [NEW]  
310:276-11-1 [NEW]  
310:276-11-2 [NEW]

**GUVERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-757; filed 4-23-03]*

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### **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 290. MECHANICAL INDUSTRY REGULATIONS [REVOKED]**

*[OAR Docket #03-758]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. General Provisions [REVOKED]  
310:290-1-1 [REVOKED]  
310:290-1-2 [REVOKED]

310:290-1-3 [REVOKED]  
310:290-1-4 [REVOKED]  
Subchapter 3. License Types, Limitations, Qualifications and Duration; Contractor Requirements; Application Procedures; Apprentice Registration; and License Retention Requirements [REVOKED]

310:290-3-1 [REVOKED]  
310:290-3-2 [REVOKED]  
310:290-3-3 [REVOKED]  
310:290-3-4 [REVOKED]  
310:290-3-5 [REVOKED]  
310:290-3-6 [REVOKED]  
310:290-3-7 [REVOKED]  
310:290-3-8 [REVOKED]

Subchapter 5. Plan Review and Code Variance Procedures and Fees, and Code Appeals [REVOKED]

310:290-5-1 [REVOKED]  
310:290-5-2 [REVOKED]  
310:290-5-3 [REVOKED]  
310:290-5-4 [REVOKED]

**GUBERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-758; filed 4-23-03]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 310. PLUMBING INDUSTRY  
REGULATIONS [REVOKED]**

*[OAR Docket #03-759]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. General Provisions [REVOKED]  
310:310-1-1 [REVOKED]  
310:310-1-2 [REVOKED]  
Subchapter 3. Committee of Plumbing Examiners and the Plumbing Hearing Board [REVOKED]  
310:310-3-1 [REVOKED]  
310:310-3-2 [REVOKED]  
310:310-3-3 [REVOKED]  
310:310-3-4 [REVOKED]  
Subchapter 5. License Types, License and Registration Fees, and Contractor Requirements [REVOKED]  
310:310-5-1 [REVOKED]  
310:310-5-2 [REVOKED]  
310:310-5-3 [REVOKED]  
310:310-5-4 [REVOKED]  
Subchapter 7. Plan Review and Code Variance Procedures and Fees, and Code Appeals [REVOKED]  
310:310-7-1 [REVOKED]  
310:310-7-2 [REVOKED]  
310:310-7-3 [REVOKED]

310:310-7-4 [REVOKED]

**GUBERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-759; filed 4-23-03]*

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

*[OAR Docket #03-760]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. General Provisions  
310:345-1-1 [AMENDED]  
310:345-1-1.1 [AMENDED]  
310:345-1-2 [AMENDED]  
Subchapter 3. Applications  
310:345-3-1 [AMENDED]  
310:345-3-3 [AMENDED]  
310:345-3-4 [AMENDED]  
310:345-3-6 [AMENDED]  
Subchapter 5. Registration  
310:345-5-1 [AMENDED]  
310:345-5-2 [AMENDED]  
310:345-5-3 [AMENDED]  
Subchapter 7. Revocation and Reinstatement  
310:345-7-1 [AMENDED]  
310:345-7-2 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-760; filed 4-23-03]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 528. CHILDREN FIRST  
ELIGIBILITY REQUIREMENTS**

*[OAR Docket #03-761]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

310:528-1-1 [NEW]  
310:528-1-2 [NEW]  
310:528-1-3 [NEW]  
310:528-1-4 [NEW]  
310:528-1-5 [NEW]

# Gubernatorial Approvals

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**GUBERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-762; filed 4-23-03]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 529. MULTIDISCIPLINARY  
TEAMS FOR CHILD PROTECTION**

*[OAR Docket #03-762]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. General Provisions [NEW]

310:529-1-1 [NEW]

310:529-1-2 [NEW]

310:529-1-3 [NEW]

Subchapter 3. Child Abuse Prevention Service [NEW]

310:529-3-1 [NEW]

310:529-3-2 [NEW]

310:529-3-3 [NEW]

310:529-3-4 [NEW]

310:529-3-5 [NEW]

**GUBERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-762; filed 4-23-03]*

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

*[OAR Docket #03-763]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

310:535-1-2 [AMENDED]

310:535-1-3 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-763; filed 4-23-03]*

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

*[OAR Docket #03-764]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Chapter 667. Hospital Standards [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-764; filed 4-23-03]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 669. TRAUMA CARE  
ASSISTANCE REVOLVING FUND**

*[OAR Docket #03-765]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 5. Reports and Financial Statements

310:669-5-1 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 7, 2003

*[OAR Docket #03-765; filed 4-23-03]*

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

*[OAR Docket #03-634]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 3. General Provider Policies

Part 1. General Scope and Administration

317:30-3-3.1 [AMENDED]

317:30-3-25 [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-2 [AMENDED]

Part 3. Hospitals

317:30-5-44 [AMENDED]

Part 5. Pharmacists

317:30-5-70.2 through 317:30-5-70.3 [AMENDED]

317:30-5-72 through 317:30-5-72.1 [AMENDED]

317:30-5-77.2 [AMENDED]

317:30-5-78.1 [AMENDED]

317:30-5-78.2 [AMENDED]

317:30-5-80 [AMENDED]

317:30-5-86 [AMENDED]

Part 6. Inpatient Psychiatric Hospitals

317:30-5-95-3 [AMENDED]

317:30-5-96 [AMENDED]

Part 7. Certified Laboratories

317:30-5-104 [AMENDED]  
 Part 9. Long Term Care Facilities  
 317:30-5-122 [AMENDED]  
 Part 17. Medical Suppliers  
 317:30-5-214 [AMENDED]  
 Part 19. Nurse Midwives  
 317:30-5-226 [AMENDED]  
 Part 23. Podiatrist  
 317:30-5-261 [AMENDED]  
 Part 25. Psychologists  
 317:30-5-276 [AMENDED]  
 Part 27. Registered Physical Therapists  
 317:30-5-291 [AMENDED]  
 Part 29. Renal Dialysis Facilities  
 317:30-5-306 [AMENDED]  
 Part 33. Transportation by Ambulance  
 317:30-5-339 [AMENDED]  
 Part 35. Rural Health Clinics  
 317:30-5-359 [AMENDED]  
 Part 37. Advanced Practical Nurse  
 317:30-5-376 [AMENDED]  
 Part 45. Optometrists  
 317:30-5-431 [AMENDED]  
 Part 47. Optical Companies  
 317:30-5-451 [AMENDED]  
 Part 49. Family Planning Centers  
 317:30-5-466 [AMENDED]  
 Part 61. Home Health Agencies  
 317:30-5-546 [AMENDED]  
 Part 63. Ambulatory Surgical Centers  
 317:30-5-567 [AMENDED]  
 Part 69. Certified Registered Nurse Anesthetists  
 317:30-5-606 [AMENDED]  
 Part 75. Federally Qualified Health Centers  
 317:30-5-661 [AMENDED]  
 Part 79. Dentists  
 317:30-5-696 [AMENDED]  
 Part 81. Chiropractors  
 317:30-5-721 [AMENDED]  
 Part 89. Radiological Mammographer  
 317:30-5-903 [AMENDED]  
 Part 108. Nutrition Services  
 317:30-5-1076 [AMENDED]  
**(APA WF # 02-01, 02-03, 02-06, 02-07, and 02-08)**  
**GUBERNATORIAL APPROVAL:**  
 April 4, 2003

*[OAR Docket #03-634; filed 4-14-03]*

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

*[OAR Docket #03-635]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 5. Individual Providers and Specialties  
 Part 9. Long Term Care Facilities  
 317:30-5-131.2. [AMENDED]  
 Part 41. Family Support Services  
 317:30-5-412. [AMENDED]  
 Part 79. Dentists  
 317:30-5-700.1. [AMENDED]  
 Part 83. Residential Behavior Management Services in  
 Foster Care Settings  
 317:30-5-740. [AMENDED]  
 317:30-5-740.1. [AMENDED]  
 317:30-5-741. [AMENDED]  
 317:30-5-742. [AMENDED]  
 317:30-5-742.1. [AMENDED]  
 317:30-5-742.2. [AMENDED]  
 317:30-5-745. [AMENDED]  
**(APA WF # 02-14, 02-16, 02-18A, and 02-19)**

**GUBERNATORIAL APPROVAL:**

April 4, 2003

*[OAR Docket #03-635; filed 4-14-03]*

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

*[OAR Docket #03-636]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Client Services  
 Part 9. Service Provisions  
 317:40-5-103. [NEW]  
**(Reference APA WF # 02-18B)**

**GUBERNATORIAL APPROVAL:**

April 3, 2003

*[OAR Docket #03-636; filed 4-14-03]*

# Gubernatorial Approvals

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## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 25. CHILD SUPPORT ENFORCEMENT DIVISION

[OAR Docket #03-727]

### RULEMAKING ACTION:

Gubernatorial approval

### RULES:

Subchapter 1. Scope, Applicability, and General Provisions

340:25-1-1.1 [AMENDED]

340:25-1-2.1 [AMENDED]

Subchapter 5. Operational Policies

Part 9. Disclosure of Information

340:25-5-66 through 340:25-5-67 [AMENDED]

Part 15. Case Initiation, Case Management, and Case Closure

340:25-5-110.1 [AMENDED]

340:25-5-114 [AMENDED]

340:25-5-118 [AMENDED]

340:25-5-123 [AMENDED]

340:25-5-124 [AMENDED]

340:25-5-124.1 [AMENDED]

340:25-5-124.2 [NEW]

340:25-5-133 [NEW]

Part 17. Past Support

340:25-5-140.1 [AMENDED]

Part 21. Establishment

340:25-5-178 [AMENDED]

340:25-5-179.1 [AMENDED]

340:25-5-183 [AMENDED]

340:25-5-185.1 [AMENDED]

Part 22. Review and Modification

340:25-5-198.1 through 340:25-5-198.2 [AMENDED]

Part 23. Enforcement

340:25-5-200.2 [NEW]

340:25-5-201.1 [NEW]

Part 31. Consumer Reporting Agencies - Credit Bureaus

340:25-5-265.1 [AMENDED]

Part 37. Recovery

340:25-5-305 [AMENDED]

340:25-5-312 [AMENDED]

340:25-5-336 [AMENDED]

Part 39. Accounting and Distribution

340:25-5-350.1 [AMENDED]

340:25-5-350.3 through 340:25-5-351 [AMENDED]

(Reference APA WF # 02-32 and 02-44)

### GUBERNATORIAL APPROVAL:

April 10, 2003

[OAR Docket #03-727; filed 4-22-03]

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## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE

[OAR Docket #03-657]

### RULEMAKING ACTION:

Gubernatorial approval

### RULES:

Subchapter 1. General Provisions

Part 10. Oklahoma Children's Services (OCS)

340:75-1-150 through 340:75-1-151 [AMENDED]

340:75-1-151.1 through 340:75-1-151.2 [NEW]

340:75-1-152 [AMENDED]

340:75-1-152.1 through 340:75-1-152.2 [REVOKED]

340:75-1-152.3 through 340:75-1-152.9 [NEW]

340:75-1-153 [REVOKED]

340:75-1-154 [AMENDED]

340:75-1-155 [NEW]

Part 11. Comprehensive Home-Based Services (CHBS)

340:75-1-175 through 340:75-1-176 [AMENDED]

340:75-1-177 through 340:75-1-178 [REVOKED]

340:75-1-179 [AMENDED]

340:75-1-180 through 340:75-1-184 [REVOKED]

Part 12. Independent Living [NEW]

340:75-1-185 [NEW]

Subchapter 6. Permanency Planning

Part 13. Independent Living

340:75-6-115.2 [REVOKED]

(Reference APA WF # 02-47)

### GUBERNATORIAL APPROVAL:

April 10, 2003

[OAR Docket #03-657; filed 4-16-03]

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## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 110. LICENSING SERVICES

[OAR Docket #03-655]

### RULEMAKING ACTION:

Gubernatorial approval

### RULES:

Subchapter 1. General Provisions

Part 3. Licensing Services - Residential Care and Agencies

340:110-1-40 through 340:110-1-47 [AMENDED]

340:110-1-47.1 through 340:110-1-47.2 [NEW]

340:110-1-51 through 340:110-1-55 [AMENDED]

(Reference APA WF # 02-45)

### GUBERNATORIAL APPROVAL:

April 10, 2003

[OAR Docket #03-655; filed 4-16-03]

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**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 110. LICENSING SERVICES**

*[OAR Docket #03-656]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

- Subchapter 1. General Provisions
- Part 1. Licensing Services - Child Care
- 340:110-1-5 through 340:110-1-6 [AMENDED]
- 340:110-1-8.3 through 340:110-1-9.1 [AMENDED]
- 340:110-1-9.3 through 340:110-1-10 [AMENDED]
- 340:110-1-20 [AMENDED]

(Reference APA WF # 02-46)

**GUBERNATORIAL APPROVAL:**

April 10, 2003

*[OAR Docket #03-656; filed 4-16-03]*

**TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD  
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #03-619]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

- Subchapter 3. The Board
- 360:1-3-8. [AMENDED]
- 360:1-3-8.1. [NEW]

**GUBERNATORIAL APPROVAL:**

March 5, 2003

*[OAR Docket #03-619; filed 4-9-03]*

**TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD  
CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, LIFE, AND DENTAL PLANS**

*[OAR Docket #03-618]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

- Subchapter 1. General Provisions
- 360:10-1-2. [AMENDED]

Subchapter 3. Administration of Plans

360:10-3-3.5. [AMENDED]

360:10-3-4. [AMENDED]

360:10-3-20. [AMENDED]

360:10-3-24. [AMENDED]

360:10-3-25. [AMENDED]

360:10-3-27. [AMENDED]

Subchapter 5. Coverage and Limitations

Part 3. Health Benefit Plans

360:10-5-20. [AMENDED]

Part 5. Life Benefits

360:10-5-32. [AMENDED]

360:10-5-34. [AMENDED]

Part 9. Dental Benefits, Limitations, and Exclusions

360:10-5-61. [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 5, 2003

*[OAR Docket #03-618; filed 4-9-03]*

**TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD  
CHAPTER 15. THE DISABILITY PROGRAM**

*[OAR Docket #03-617]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

360:15-1-18. [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 5, 2003

*[OAR Docket #03-617; filed 4-9-03]*

**TITLE 377. OFFICE OF JUVENILE AFFAIRS  
CHAPTER 3. ADMINISTRATIVE SERVICES**

*[OAR Docket #03-723]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 11. Risk Management

377:3-11-1 [AMENDED]

377:3-11-2 [AMENDED]

377:3-11-3 [AMENDED]

377:3-11-5 [AMENDED]

377:3-11-9 [AMENDED]

377:3-11-10 [AMENDED]

377:3-11-11 [AMENDED]

# Gubernatorial Approvals

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## **GUBERNATORIAL APPROVAL:**

May 22, 2003

*[OAR Docket #03-723; filed 4-22-03]*

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### **TITLE 545. BOARD OF PODIATRIC MEDICAL EXAMINERS CHAPTER 15. EXAMINATION/PRECEPTORSHIP/ LICENSURE**

*[OAR Docket #03-645]*

## **RULEMAKING ACTION:**

Gubernatorial approval.

## **RULES:**

- 545:15-1-1. Purpose [AMENDED]
- 545:15-1-2. Examination [AMENDED]
- 545:15-1-3.1. Direct supervision of an applicant [REVOKED]
- 545:15-1-6. Qualifications for a preceptee [REVOKED]
- 545:15-1-7. Qualifications for a preceptor [REVOKED]
- 545:15-1-8. Course of study for preceptee [REVOKED]
- 545:15-1-9. Progress review of preceptee [REVOKED]

## **GUBERNATORIAL APPROVAL:**

April 10, 2003

*[OAR Docket #03-645; filed 4-15-03]*

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### **TITLE 610. STATE REGENTS FOR HIGHER EDUCATION CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #03-722]*

## **RULEMAKING ACTION:**

Gubernatorial approval

## **RULES:**

- Subchapter 11. Purchasing [NEW]
- 610:1-11-1 Purpose [NEW]
- 610:1-11-2 Purchasing authority for OneNet statewide contracts [NEW]
- 610:1-11-3 Definitions [NEW]
- 610:1-11-4 General contracting and purchasing provisions [NEW]
- 610:1-11-5 Vendor registration [NEW]
- 610:1-11-6 Vendor retention and removal from bidders list [NEW]
- 610:1-11-7 Competitive bidding [NEW]
- 610:1-11-8 Request for Proposals process [NEW]
- 610:1-11-9 Group purchasing acquisitions [NEW]
- 610:1-11-10 Sole Source contracts [NEW]

- 610:1-11-11 Emergency acquisition process [NEW]
- 610:1-11-12 Purchases \$2,500 or less [NEW]
- 610:1-11-13 Purchases between \$2,501 and \$25,000 [NEW]
- 610:1-11-14 Purchases in excess of \$25,000 [NEW]
- 610:1-11-15 Purchases in excess of \$100,000 [NEW]
- 610:1-11-16 Professional services contracts [NEW]
- 610:1-11-17 Training [NEW]

## **GUBERNATORIAL APPROVAL:**

April 10, 2003

*[OAR Docket #03-722; filed 4-21-03]*

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### **TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 15. FISCAL, PERSONNEL AND GENERAL OPERATIONS**

*[OAR Docket #03-690]*

## **RULEMAKING ACTION:**

Gubernatorial approval

## **RULES:**

- Subchapter 37. Pay Incentive Plan [NEW]
- 725:15-37-1 [NEW]
- 725:15-37-2 [NEW]

## **GUBERNATORIAL APPROVAL:**

April 1, 2003

*[OAR Docket #03-690; filed 4-21-03]*

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### **TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 15. FISCAL, PERSONNEL AND GENERAL OPERATIONS**

*[OAR Docket #03-692]*

## **RULEMAKING ACTION:**

Gubernatorial approval

## **RULES:**

- Subchapter 35. Revenue Bond and Note Issuance [NEW]
- 725:15-35-1 [NEW]
- 725:15-35-2 [NEW]
- 725:15-35-3 [NEW]
- 725:15-35-4 [NEW]
- 725:15-35-5 [NEW]

## **GUBERNATORIAL APPROVAL:**

April 1, 2003

*[OAR Docket #03-692; filed 4-21-03]*

**TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT  
CHAPTER 25. STATE LODGES  
OPERATIONS**

*[OAR Docket #03-691]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 21. Lodge Division Employee Pay Incentive Plan [REVOKED]

725:25-21-1 [REVOKED]

725:25-21-2 [REVOKED]

725:25-21-3 [REVOKED]

725:25-21-4 [REVOKED]

725:25-21-5 [REVOKED]

**GUBERNATORIAL APPROVAL:**

April 1, 2003

*[OAR Docket #03-691; filed 4-21-03]*

**TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT  
CHAPTER 30. DIVISION OF STATE PARKS**

*[OAR Docket #03-689]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 22. Private Concessions [AMENDED]

725:30-22-1. [AMENDED]

725:30-22-1.1 [NEW]

725:30-22-2. [AMENDED]

725:30-22-3. [AMENDED]

725:30-22-4. [NEW]

725:30-22-5. [NEW]

725:30-22-6. [NEW]

725:30-22-7. [NEW]

**GUBERNATORIAL APPROVAL:**

April 1, 2003

*[OAR Docket #03-689; filed 4-21-03]*

**TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT  
CHAPTER 30. DIVISION OF STATE PARKS**

*[OAR Docket #03-693]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 18. Special Use Areas

725:30-18-1. State Capitol Park [REVOKED]

725:30-18-4. Quartz Mountain State Park [REVOKED]

**GUBERNATORIAL APPROVAL:**

April 1, 2003

*[OAR Docket #03-693; filed 4-21-03]*

**TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT  
CHAPTER 35. THE OKLAHOMA FILM  
OFFICE**

*[OAR Docket #03-694]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

Subchapter 1. Oklahoma Film Enhancement Rebate Program [AMENDED]

725:35-1-3 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 1, 2003

*[OAR Docket #03-694; filed 4-21-03]*



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# Gubernatorial Disapprovals

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

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

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

*[OAR Docket #03-749]*

**RULEMAKING ACTION:**  
Gubernatorial disapproval

**RULES:**

Subchapter 1. General Provisions  
310:667-1-3

**GUBERNATORIAL DISAPPROVAL:**

Written disapproval received April 7, 2003

*[OAR Docket #03-749; filed 4-23-03]*

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# Withdrawn Rules

An agency may withdraw proposed PERMANENT rules prior to final adoption (approval by Governor/Legislature) by notifying the Governor and the Legislature and by publishing a notice in the *Register* of such a withdrawal.

An agency may withdraw proposed EMERGENCY rules prior to approval/disapproval by the Governor by notifying the Governor, the Legislature, and the Office of Administrative Rules. The withdrawal notice is not published in the *Register*, however, unless the agency published a Notice of Rulemaking Intent in the *Register* before adopting the EMERGENCY rules.

*For additional information on withdrawal of proposed rules, see 75 O.S., Section 308(F) and 253(K) and OAC 655:10-7-33.*

## **TITLE 10. OKLAHOMA ACCOUNTANCY BOARD CHAPTER 15. LICENSURE AND REGULATION OF ACCOUNTANCY**

*[OAR Docket #03-686]*

### **RULEMAKING ACTION:**

Withdrawal of PERMANENT rulemaking

### **WITHDRAWN RULES:**

Subchapter 27. Fees

10:15-27-1 [AMENDED]

10:15-27-2 [AMENDED]

10:15-27-3 [AMENDED]

10:15-27-4 [AMENDED]

10:15-27-9 [AMENDED]

### **DATES:**

#### **Adoption:**

February 28, 2003

#### **Submitted to Governor:**

March 5, 2003

#### **Submitted to House:**

March 5, 2003

#### **Submitted to Senate:**

March 5, 2003

#### **Withdrawn:**

April 21, 2003

*[OAR Docket #03-686; filed 4-21-03]*

## **TITLE 380. DEPARTMENT OF LABOR CHAPTER 50. ABATEMENT OF FRIABLE ASBESTOS MATERIALS RULES**

*[OAR Docket #03-654]*

### **RULEMAKING ACTION:**

Withdrawal of PERMANENT rulemaking

### **WITHDRAWN RULES:**

Chapter 50. Abatement of Friable Asbestos Materials Rules

[AMENDED]

### **DATES:**

#### **Adoption:**

March 31, 2003

### **Submitted to Governor:**

April 1, 2003

### **Submitted to House:**

April 1, 2003

### **Submitted to Senate:**

April 1, 2003

### **Withdrawn:**

April 16, 2003

*[OAR Docket #03-654; filed 4-16-03]*

## **TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 30. DIVISION OF STATE PARKS**

*[OAR Docket #03-696]*

### **RULEMAKING ACTION:**

Withdrawal of PERMANENT rulemaking

### **RULES:**

Subchapter 23. Mineral Leases and Operations [NEW]

725:30-23-1. [NEW]

725:30-23-2. [NEW]

725:30-23-3. [NEW]

725:30-23-4. [NEW]

725:30-23-5. [NEW]

### **DATES:**

#### **Adoption:**

February 20, 2003

#### **Submitted to the Governor:**

February 24, 2003

#### **Submitted to the House:**

February 24, 2003

#### **Submitted to the Senate:**

February 24, 2003

#### **Withdrawn:**

April 18, 2003

*[OAR Docket #03-696; filed 4-21-03]*



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

[OAR Docket #03-639]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 1. General Provisions  
140:1-1-2 [AMENDED]

### AUTHORITY:

Board of Chiropractic Examiners; 59 Section 161.3 and 161.6

### DATES:

#### Adoption:

February 27, 2003

#### Approved by Governor:

April 4, 2003

#### Effective:

Effective immediately upon Governor's approval

#### Expiration:

Effective through July 14, 2004, unless superseded by another rule or disapproved by the legislature

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

See Attorney General Opinion 02-22. The Oklahoma Board of Chiropractic Examiners under 161.6 (A) has the authority and responsibility to promulgate rules as may be necessary to regulate the practice of chiropractic in this state and to implement and enforce the provisions of the Oklahoma Chiropractic Practice Act.

### ANALYSIS:

The rule amendments under 140:1-1-2 were necessary to comply with the Attorney General opinion for the scope of practice of a Chiropractic physician, and also to add and change language to reflect statutory changes approved by the Governor in May of 2002.

### CONTACT PERSON:

Beth Scott (405) 524-6223

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

## SUBCHAPTER 1. GENERAL PROVISIONS

### 140:1-1-2. Definitions

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

**"Accredited Chiropractic College"** means a chiropractic educational institution, which is accredited by the Commission of Accreditation of the Council on Chiropractic Education.

**"Act"** means the Oklahoma Chiropractic Act, 59 O.S. 1991, §§ 161.1et seq.

**"APA"** means the Oklahoma Administrative Procedures Act, 75 O.S. 1991, §§ 250 et seq.

**"Advisory Committee"** means the committee appointed by the Board to advise and assist the Board in the investigation of the qualifications for licensure, complaints as to the conduct of chiropractic physicians, and for such other matters as the Board may delegate to them.

**"Applicant"** means any person submitting an applicant for licensure to the Board

**"Board"** means the Board of Chiropractic Examiners.

**"Chiropractic"** means the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans.

**"Chiropractic physician or licensee"** means a person who holds an original license to practice chiropractic in this state.

**"Continuing education requirements"** means attendance by a licensee at a minimum of two (2) days of Chiropractic education seminars as required for a renewal license.

**"Emergency meeting"** means a meeting of the Board which is called pursuant to Open Meeting Act based upon exigent circumstances which require expedited attention by the Board to the matters concerned.

**"Examination"** means the process used by the Board prior to the issuance of an original license to test the qualifications.

**"Executive Secretary"** means the Executive Secretary of the Board.

**"Final order"** means an order made by the Board pursuant to the APA and which is subject to judicial review.

**"Individual proceeding"** means the formal process employed by the Board to provide a hearing for a licensee of the Board accused of a violation of the Act and in which the

## Emergency Adoptions

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Board may take action against such person's original license to practice chiropractic in this state.

**"Licensure"** means the Board's process with respect to the grant, denial, renewal, revocation, or suspension of an original or renewal license.

**"Order"** means a formal or official decision of the Board including but not limited to, final orders.

**"Original license"** means a license, which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure in the Act,

(A) by examination pursuant to § 161.7 of the Act and 140:10-3-1 through 140:10-3-4; or

(B) by reciprocity pursuant to § 161.9 of the Act and 140:10-3-5.

**"Party"** means a person or agency named and participating or properly seeking and entitled by law to participate in an individual proceeding.

**"Person"** means any individual, association, governmental subdivision, or public or private organization of any character other than an agency.

**"Reciprocity"** means the ability of an applicant to obtain Oklahoma Licensure on the following conditions:

(A) The applicant is of good moral character;

(B) The requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original license by examination in this state at the date of such license;

(C) The applicant has no disciplinary matters pending against him or her in any other state, country, territory, or province;

(D) The licensee being reciprocated was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;

(E) The applicant passes an oral interview and a practical examination given by the Board; and

(F) The applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.

**"Regular meetings"** means regular meetings of the Board held at such times and places as scheduled by the Board and includes continued and reconvened meetings as may be allowed pursuant to the Open Meetings Act. Provided, however, that continued and reconvened meetings shall be as limited by the Open Meeting Act.

**"Renewal license"** means a license issued by the Board on or before the first day of January of each year to a licensee, which authorizes the license to practice chiropractic in this state for the succeeding calendar year.

**"Revocation"** means the recalling, annulling or rendering inoperative or original license or renewal license, or both, by the Board, after notice and opportunity for a hearing in an individual proceeding.

**"Rule or rules"** means the rules of the Board promulgated pursuant to the APA or its successor statutes.

**"Rule-making"** means the process employed by the Board for the promulgation of a rule.

**"Scope of practice"** means chiropractic is the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans. The scope of practice of chiropractic shall include those diagnostic and treatment services and procedures, which have been taught by an accredited chiropractic college and have been approved by the Board of Chiropractic Examiners. Such diagnostic and treatment services and procedures shall include the following: Chiropractic physicians may examine, analyze and diagnose the human body to correct, relieve or prevent diseases and abnormalities by the use of any physical, chemical, electrical, or thermal method; use or order diagnostic radiologic imaging; use or order laboratory testing; and use any other method of examination for diagnosis and analysis taught by an accredited chiropractic college and approved by the Board of Chiropractic Examiners. In addition, Chiropractic physicians may adjust, manipulate and treat the human body by manual, mechanical, chemical, electrical or natural methods; by the use of physiotherapy; meridian therapy; by utilizing hygienic, sanitary and therapeutic measures; by the administration of naturopathic and homeopathic remedies, by the application of first aid or by performing any other treatment taught by an accredited chiropractic college and approved by the Board of Chiropractic Examiners. Nothing in this rule shall permit a Chiropractic Physician to prescribe legend drugs, beyond injectable nutrients, as is currently the law in Title 59 Section 161.12 of the Oklahoma Statutes.

**"Secretary-Treasurer"** means the Secretary-Treasurer of the Board.

**"Special meeting"** means all meetings of the Board other than regular or emergency meetings.

**"Suspension"** means temporary discontinuance or cessation, with an expectation of reinstatement, of an original license or renewal license, or both by the Board after notice and opportunity for a hearing as required in an individual proceeding

[OAR Docket #03-639; filed 4-14-03]

(format accepted 4-15-03)

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

[OAR Docket #03-605]

#### RULEMAKING ACTION:

EMERGENCY adoption

#### RULES:

Subchapter 15. Personal Care Services

317:35-15-4. [AMENDED]

Subchapter 17. ADvantage Waiver Services

317:35-17-2. [AMENDED]

Subchapter 19. Nursing Facility Services

317:35-19-7.1. [AMENDED]

(Reference APA WF # 03-05)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1025.1 through 1025.3 of Title 56 of Oklahoma Statutes

**DATES:**

**Adoption:**

February 13, 2003

**Approved by Governor:**

April 1, 2003

**Effective:**

Immediately upon Governor's approval

**Expiration:**

Effective through July 14, 2004, 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 revisions to tighten certain Long Term Care Service medical eligibility minimum qualifications. The state constitution requires all agencies to maintain a balanced budget. The Oklahoma Department of Human Services pays the state share for these services and has requested program constraints that assist in maintaining a balanced budget. Failure to maintain a balanced budget would lead to a breach of the state constitution.

**ANALYSIS:**

Medical Assistance for Adults and Children-Eligibility, Long Term Care specific, rules are revised to tighten the medical eligibility minimum qualification criteria for the for State Plan Personal Care and Agency Personal Care Services within the ADvantage Waiver Program. Due to the state's budget crisis, the Oklahoma Department of Human Services has been forced to implement cost savings measures. DHS, who has requested the rule revision as they pay the state share for these services, has determined that by increasing the Uniform Comprehensive Assessment Tool (UCAT) qualifying minimum scores for Personal Care, they will be able to annually save approximately \$327,662.80 in state funds. Based on a DHS Aging Services Division review of recent applicants for and current recipients of Personal Care, only individuals requesting or receiving Personal Care services would be affected by this rule. Additional revisions will add the definition of a Community Services Worker, the Community Services Worker Registry, and the Medicaid personal care services provider to agency rules in order to comply with Sections 1025.1 through 1025.3 of Title 56 of Oklahoma Statutes. Revisions are needed to tighten the medical eligibility minimum qualifications for State Plan Personal Care, ADvantage Waiver Program, and Nursing Facility Care services and to comply with Sections 1025.1 through 1025.3 of Title 56 of Oklahoma Statutes.

**CONTACT PERSON:**

Joanne Terlizzi at (405)522-7272

**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 15. PERSONAL CARE SERVICES**

**317:35-15-4. Determination of medical eligibility for Personal Care**

(a) **Eligibility.** The area nurse, or designee, utilizes the UCAT criteria and professional ~~judgment~~ judgment in determining medical eligibility and level of care. To be eligible for Personal Care services, the individual must:

- (1) have adequate informal supports that contribute to care, or decision making ability as documented on the

UCAT, to remain in his/her home without risk to his/her health, safety, and well-being:

- (A) the individual must have the decision making ability to respond appropriately to situations that jeopardize his/her health and safety or available supports that compensate for his/her lack of ability as documented on the UCAT, or
- (B) the individual who has his/her decision making ability, but lacks the physical capacity to respond appropriately to situations that jeopardize health and safety and has been informed by the LTC nurse of potential risks and consequences may be eligible;
- (2) require a care plan involving the planning and administration of services delivered under the supervision of professional personnel;
- (3) have a physical impairment or combination of physical and mental impairments. An individual who poses a threat to self or others as supported by professional documentation may not be approved for Personal Care services;
- (4) not have members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the client or other household visitors;
- (5) lack the ability to meet personal care needs without additional supervision or assistance, or to communicate needs to others; and
- (6) require assistance, not of a technical nature, to prevent or minimize physical health regression and deterioration.

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

- (1) **"ADL"** means the activities of daily living. Activities of daily living are activities that reflect the client's ability to perform self-care tasks essential for sustaining health and safety such as:
  - (A) bathing,
  - (B) eating,
  - (C) dressing,
  - (D) grooming,
  - (E) transferring (includes getting in and out of a tub, bed to chair, etc.),
  - (F) mobility,
  - (G) toileting, and
  - (H) bowel/bladder control.
- (2) **"ADLs score of three or greater"** means the client cannot do one ADL at all or needs some help with two ADLs.
- (3) **"ADLs score is two"** means the client needs some help with one ADL.
- (4) **"Client support very low need"** means the client's UCAT Client Support score is zero which indicates in the UCAT assessor's clinical judgment, formal and informal sources are sufficient for present level of client need in most functional areas.

## Emergency Adoptions

(5) **"Client support low need"** means support from formal and informal sources are nearly sufficient for present level of client need in most functional areas.

(6) **"Client support moderate need"** means the UCAT ~~client support~~ Client Support score is 15, which indicates in the UCAT assessor's clinical judgment formal and informal support is available, but overall, it is inadequate, changing, fragile or otherwise problematic.

(7) **"Client support high need"** means the client's UCAT ~~client support~~ Client Support score is 25 and formal and informal supports are not sufficient as there is very little or no support available to meet a high degree of client need.

(8) **"Community Services Worker"** means any person employed by or under contract with a community services provider who provides, for compensation or as a volunteer, health-related services, training, or supportive assistance to frail elderly, disabled person(s), or person(s) with developmental disabilities, and who is not a licensed health professional.

(9) **"Community Services Worker Registry"** means a registry established by the Department of Human Services, as required by Section 1025.1 et seq. of Title 56 of the Oklahoma Statutes, to list community services workers against whom a final investigative finding of abuse, neglect, or exploitation, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, involving a frail elderly, disabled person(s) or person(s) with developmental disabilities has been made by DHS or an administrative law judge, amended in 2002 to include the listing of Medicaid personal care assistants providing personal care services.

(8)10) **"IADL"** means the instrumental activities of daily living.

(9)11) **"IADLs score is at least ~~four~~ six"** means the client needs some help with at least ~~two~~ three IADLs or cannot do two IADLs at all.

(4)12) **"IADLs score of ~~six~~ eight or greater"** means the client ~~cannot do two IADLs at all or the client~~ needs some help with ~~three~~ four IADLs or the client cannot do ~~one IADL~~ two IADLs at all and needs some help with ~~two~~ one other IADLs.

(4)13) **"Instrumental activities of daily living"** means those activities that reflect the client's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

- (A) shopping,
- (B) cooking,
- (C) cleaning,
- (D) managing money,
- (E) using a telephone,
- (F) doing laundry,
- (G) taking medication, and
- (H) accessing transportation.

(14) **"Medicaid personal care services provider"** means a program, corporation, or individual who provides services under the state's Medicaid personal care program

or ADvantage Waiver to individuals who are elderly or who have a physical disability.

(4)15) **"MSQ"** means the mental status questionnaire.

(4)16) **"MSQ moderate risk range"** means a total weighted score of ~~five~~ seven or more which indicates ~~two or more positive indications (out of six probes) of significant an~~ orientation-memory-concentration impairment or a ~~very significant indication of~~ memory impairment.

(4)17) **"Nutrition moderate risk"** means the total weighted UCAT Nutrition score is 8 or more which indicates poor appetite or weight loss combined with special diet requirements, medications or difficulties in eating.

(4)18) **"Social resources score is ~~six~~ eight or more"** means the client lives alone or has no informal support when sick or needs assistance, or has little or no contact with others.

(c) **Medical eligibility minimum criteria for Personal Care.** The medical eligibility minimum criteria for Personal Care is the minimum UCAT score criteria which a client must meet for medical eligibility for personal care and are:

(1) functional ADLs score is a ~~three~~ five or greater; or IADLs score of ~~six~~ eight or greater; or Nutrition score is ~~in moderate risk range~~ eight or greater; or the MSQ score is ~~in the moderate risk range~~ seven or greater; or the ADLs score is ~~two~~ three and IADLs score is at least ~~four~~ six, and

(2) ~~client support~~ Client Support is moderate risk; or ~~client support~~ Client Support score is five or more and the ~~social resources~~ Social Resources score is ~~six~~ eight or more.

(d) **Medical eligibility determination.** Medical eligibility for Personal Care is determined by the Department of Human Services. The medical decision for Personal Care, the care plan and service plan approval for Personal Care is made by the DHS area nurse, or designee, utilizing the Uniform Comprehensive Assessment Tool (UCAT).

(1) When Personal Care services are requested, the local office is responsible for completing the UCAT, Part III.

(2) Categorical relationship must be established for determination of eligibility for Personal Care. If categorical relationship has not already been established but there is an extremely emergent need for Personal Care and current medical information is not available, the local office authorizes a medical examination. When authorization is necessary, the county director issues the Authorization for Examination, DHS form ABCDM-16, and the Report of Physician's Examination, DHS form ABCDM-80, to a licensed medical or osteopathic physician (refer to OAC 317:30-5-1). The physician cannot be in a medical facility intern, residency, or fellowship program or in the full time employment of the Veterans Administration, Public Health Service or other agency. The county social worker submits the information to the Level of Care Evaluation Unit (LOCEU) to request a determination of eligibility for categorical relationship. LOCEU renders a decision on categorical relationship using the same definition used by SSA. A follow-up is required by the DHS social worker with the Social Security Administration (SSA) to be sure

that SSA's disability decision agrees with the decision of LOCEU.

(3) Approved contract agencies may complete the UCAT for intake and screening and forward the form to the county office.

(4) When DHS does not receive a UCAT from the AA, a UCAT I is initiated by the DHS county staff upon receipt of the referral.

(5) The DHS Long Term Care (LTC) nurse completes the UCAT III assessment visit within 10 working days of receipt of the referral for Personal Care from the social worker or receipt of the UCAT I and II (Intake and Screening) request for Personal Care for the client who is Medicaid eligible at the time of the request. The LTC nurse completes the assessment visit within 20 working days of the Medicaid application for the client who has not been determined financially Medicaid eligible at the time of the request. The DHS social worker is responsible for contacting the individual within three working days from the date of the receipt of the request for services to initiate the financial eligibility process. If the UCAT I or II indicates the request is from an individual who resides at home and an immediate response is required to ensure the health and safety of the client (emergency situation) or to avoid institutional placement, the UCAT III assessment visit has top priority for scheduling.

(6) During the assessment visit, the LTC nurse informs the client of medical eligibility criteria and provides information about the different DHS long-term care service options. The nurse documents on the UCAT III whether the client wants to be considered for nursing facility level of care services or if the client is applying for a specific service program. If based upon the information obtained during the assessment, the nurse determines that the client may be at risk for health and safety, Adult Protective Services (APS) staff are notified immediately. The referral is documented on the UCAT.

(A) The LTC nurse uses the Personal Care service plan form to develop an individual plan of care. The plan of care and service plan, including the amount and frequency of DHS Personal Care services, is based on the client's needs as determined by the UCAT III assessment.

(B) If the client's needs cannot be met by DHS Personal Care and Home Health services alone, the LTC nurse informs the client of the other DHS Long Term Care (LTC) service options. The LTC nurse assists the client in accessing service options selected by the client in addition to, or in place of, Personal Care services.

(C) If multiple household members are applying for DHS Personal Care services, the UCAT assessment is done for all the client household members at the same time. Individual care plans and service plans are discussed and developed with the group of clients who appear eligible so service delivery can be coordinated to achieve the most efficient use of resources.

The number of units of service allocated to each individual is distributed between family members to assure that the absence of one family member does not adversely affect the family member(s) remaining in the home.

(D) If the length of time from the date the initial assessment information was obtained to the date the assessment is submitted to the area nurse, or designee, exceeds 60 days, the assessment must be updated as necessary including a new signature and date. A new UCAT and assessment visit is required if the length of time exceeds 90 days.

(7) The LTC nurse scores the UCAT III. Within five working days of the assessment visit, the nurse forwards the UCAT and the completed Personal Care plan and service plan forms to the area nurse, or designee, for medical eligibility determination. The client's Personal Care service plan and care plan include:

(A) goals and tasks;

(B) the number of authorized Personal Care units (hours) per month;

(C) frequency of service visits;

(D) the effective date for services; and

(E) the certification period for the care plan and service plan.

(8) Within 10 working days of receiving the UCAT, care plan, and service plan from the LTC nurse, the area nurse, or designee, determines medical eligibility for Personal Care services, certifies or denies the care plan and service plan and enters the medical decision on MEDATS. Denied service and care plans are returned to the LTC nurse for revision or further justification. The LTC nurse revises and re-submits the denied service and care plans to the area nurse, or designee, within five working days of receipt of the returned documents.

(9) The area nurse, or designee, determines the medical certification period for the plan of care and service plan which is the same as the certification period for the medical eligibility decision [see OAC 317:35-15-7(b)].

## **SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES**

### **317:35-17-2. Level of care medical eligibility determination**

The DHS area nurse, or designee (OHCA, LOCEU makes some determinations when PASRR is involved), determines medical eligibility for ADvantage program services based on the physician's written order of the need for care, the Long Term Care (LTC) nurse's Uniform Comprehensive Assessment Tool (UCAT) III assessment and the determination that the client has unmet care needs that require ADvantage or NF services to assure client health and safety. ADvantage services are initiated to support the informal care that is being provided in the client's home, or, that based on the UCAT, can be expected to be provided in the client's home upon discharge of the client from a NF or hospital. These services are not intended

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to take the place of regular care provided by family members and/or by significant others. When there is an informal (not paid) system of care available in the home, ADvantage service provision will supplement the system within the limitations of ADvantage Program policy.

(1) **Definitions.** The following words and terms when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(A) **"ADL"** means the activities of daily living. Activities of daily living are activities that reflect the client's ability to perform self-care tasks essential for sustaining health and safety such as:

- (i) bathing,
- (ii) eating,
- (iii) dressing,
- (iv) grooming,
- (v) transferring (includes getting in and out of a tub, bed to chair, etc.),
- (vi) mobility,
- (vii) toileting, and
- (viii) bowel/bladder control.

(B) **"ADLs score in high risk range"** means the client's total weighted UCAT ADL score is ~~8~~ 10 or more which indicates the client needs some help with ~~4~~ 5 ADLs or that the client cannot do ~~2~~ 3 ADLs at all plus the client needs some help with 1 other ADL.

(C) **"ADLs score at the high end of the moderate risk range"** means client's total weighted UCAT ADL score is ~~6~~ 8 or ~~7~~ 9 which indicates the client needs help with ~~3~~ 4 ADLs or ~~that the client cannot do~~ 2 3 ADLs at all ~~or the client cannot do 1 ADL at all and needs help with 2 ADLs.~~

(D) **"CHC"** means Comprehensive Home Care.

(E) **"Client Support high risk"** means client's UCAT Client Support score is 25 which indicates in the UCAT assessor's clinical ~~judgement~~ judgment, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, ADvantage and/or State Plan Personal Care services, very little or no support is available from informal and formal sources and the client requires additional care that is not available through Medicare, Veterans Administration, or other Federal entitlement programs.

(F) **"Client Support moderate risk"** means client's UCAT Client Support score is 15 which indicates in the UCAT assessor's clinical judgement, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, ADvantage and/or State Plan Personal Care services, support from informal and formal sources is available, but overall, it is inadequate, changing, fragile or otherwise problematic and the client requires additional care that is not available through Medicare, Veterans Administration, or other federal entitlement programs.

(G) **"Cognitive Impairment"** means that the person, as determined by the clinical judgement of

the LTC Nurse or the AA, does not have the capability to think, reason, remember or learn required for self-care, communicating needs, directing care givers and/or using appropriate ~~judgement~~ judgment for maintenance of their own health or safety. The clinical ~~judgement~~ judgment of cognitive impairment is based on MSQ performance in combination with a more general evaluation of cognitive function from interaction with the person during the UCAT assessment.

(H) **"Developmental Disability"** means a severe, chronic disability of an individual that:

- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) is manifested before the individual attains age 22;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in three or more of the following areas of major life activity:

- (I) self-care;
- (II) receptive and expressive language;
- (III) learning;
- (IV) mobility;
- (V) self-direction;
- (VI) capacity for independent living; and
- (VII) economic self-sufficiency; and

(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated.

(I) **"Environment high risk"** means client's UCAT Environment score is 25 which indicates in the UCAT assessor's clinical ~~judgement~~ judgment, the physical environment is strongly negative or hazardous.

(J) **"Environment moderate risk"** means client's UCAT Environment score is 15 which indicates in the UCAT assessor's clinical ~~judgement~~ judgment, many aspects of the physical environment are substandard or hazardous.

(K) "Health Assessment high risk" means client's UCAT health assessment score is 25 which indicates in the UCAT assessor's clinical judgment, the client has one or more chronic health conditions, whose symptoms are rapidly deteriorating, uncontrolled, or not well controlled and requiring a high frequency or intensity of medical care/oversight to bring under control and whose functional capacity is so limited as to require full time assistance or care performed daily, by, or under the supervision of professional personnel and has multiple unmet needs for services available only through the ADvantage program or a Nursing Facility (NF) and requires NF placement immediately if these needs cannot be met by other means.

**(L) "Health Assessment low risk"** means client's health assessment score is 5 which indicates, in the UCAT assessor's clinical judgment, the client has one or more chronic, stable, health conditions, whose symptoms are controlled or nearly controlled, which benefit from available, or usually available, medical treatment or corrective measures, and may have an unmet need for a service available only through the ADvantage program or a Nursing Facility (NF) but is not likely to enter a NF if these needs are not met.

**(KM) "Health Assessment moderate risk"** means client's UCAT Health Assessment score is 15 which indicates in the UCAT assessor's clinical judgment, the client has one or more diseases that require substantial medical attention or assistance chronic changing health conditions, whose symptoms are fragile or worsening and require medical care/oversight, to bring under control or to maintain in a stable, controlled state and has multiple unmet needs for services available only through the ADvantage program or a Nursing Facility (NF) and is likely to enter a NF if these needs are not met.

**(LN) "IADL"** means the instrumental activities of daily living.

**(MO) "IADLs score in high risk range"** means client's total weighted UCAT IADL score is ~~8~~ 12 or more which indicates the client needs some help with ~~4~~ 6 IADLs or cannot do ~~2~~ 4 IADLs at all plus needs some help with 1 other IADL.

**(NP) "Instrumental activities of daily living"** means those activities that reflect the client's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

- (i) shopping,
- (ii) cooking,
- (iii) cleaning,
- (iv) managing money,
- (v) using a telephone,
- (vi) doing laundry,
- (vii) taking medication, and
- (viii) accessing transportation.

**(OQ) "Mental Retardation"** means that the person has, as determined by a PASRR level II evaluation, substantial limitations in functional ability due to significantly sub-average intellectual functioning related to an event occurring before the age of 18;

**(PR) "MSQ"** means the mental status questionnaire.

**(QS) "MSQ score in high risk range"** means the client's total weighted UCAT MSQ score is ~~10~~ 12 or more which indicates ~~3 or more positive indications (out of six probes) of significant a severe~~ orientation-memory-concentration impairment, or ~~very significant indication of a severe~~ memory impairment.

**(RT) "MSQ score at the high end of the moderate risk range"** means the client's total weighted

UCAT MSQ score is ~~8~~ (10) or ~~9~~ (11) which indicates ~~2 or more positive indications of significant an~~ orientation-memory-concentration impairment, or a ~~very~~ significant ~~indication of~~ memory impairment.

**(SU) "Nutrition high risk"** means a total weighted UCAT Nutrition score is ~~10-12~~ or more which indicates the client has significant eating difficulties combined with poor appetite, weight loss, and/or special diet requirements.

**(TV) "Social Resources high risk"** means a total weighted UCAT Social Resources score is 15 or more, which indicates the client lives alone, combined with none or very few social contacts and no supports in times of need.

**(2) Minimum UCAT criteria.** A client medically qualifies for ADvantage services if the UCAT documents that the person has a clinically documented, progressive degenerative disease process that responds to treatment, such as Human Immunodeficiency Virus (HIV), Acquired Immunodeficiency Syndrome (AIDS), Multiple Sclerosis (MS), or Parkinson's Disease, and previously has required Hospital or NF level of care services for treatment related to the condition and requires ADvantage services to maintain the treatment regimen to prevent health deterioration. The LTC or AA nurse documents on the UCAT III (under Health Assessment Clinical Judgment) previous Hospital or NF level of care services for treatment of the condition and the need for ADvantage services to access or continue a treatment regimen to prevent health deterioration. The minimum UCAT criteria for the ADvantage Waiver are the same as for NF level of care criteria:

- (A) Health Assessment is in the moderate risk range; or
- (B) either the ADLs or MSQ score is in the high risk range; or
- (C) any combination of two or more of the following:
  - (i) ADLs score is at the high end of moderate risk range; or,
  - (ii) MSQ score is at the high end of moderate risk range; or,
  - (iii) IADLs score is in the high risk range; or,
  - (iv) Nutrition score is in the high risk range; and,
- (D) Client Support is moderate risk; or,
- (E) Environment is high risk; or,
- (F) Environment is moderate risk and Social Resources is in the high risk range.

**(3) NF Level of Care Services.** To be eligible for NF level of care services, meeting the minimum UCAT criteria demonstrates the individual must:

- (A) require a treatment plan involving the planning and administration of services that require the skills of licensed or otherwise certified technical or professional personnel, are provided directly or under the supervision of such personnel, and are prescribed by a physician;

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- (B) have a physical impairment or combination of physical, mental and/or functional impairments;
- (C) require professional nursing supervision (medication, hygiene and/or dietary assistance);
- (D) lack the ability to adequately and appropriately care for self or communicate needs to others;
- (E) require medical care and treatment in order to minimize physical health regression or deterioration;
- (F) require care that is not available through family and friends, Medicare, Veterans Administration, or other federal entitlement program with the exception of Indian Health Services; and
- (G) require care that cannot be met through Medicaid State Plan Services, including Personal Care, if financially eligible.

(4) Exception to NF Level of Care Services. The DHS area nurse may make an exception to minimum criteria and approve medical eligibility for ADvantage when the UCAT documents that the person has a clinically documented, progressive degenerative disease process that responds to treatment and requires ADvantage services to maintain the treatment regimen to prevent health deterioration. The LTC or AA nurse documents on the UCAT III (under Health Assessment Clinical Judgment) and the need for ADvantage services to access or continue a treatment regimen to prevent health deterioration.

### SUBCHAPTER 19. NURSING FACILITY SERVICES

#### 317:35-19-7.1. Level of care medical eligibility determination

The DHS area nurse, or designee (OHCA, LOCEU makes some determinations when PASRR is involved), determines medical eligibility ~~into~~ for the ADvantage program or nursing facility services based on the physician's recommendation for the need for care and the LTC nurse's UCAT III assessment, outcome of the Level II PASRR, if completed, and professional ~~judgement-judgment.~~

(1) **Definitions.** The following words and terms when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

- (A) "**ADL**" means the activities of daily living. Activities of daily living are activities that reflect the client's ability to perform self-care tasks essential for sustaining health and safety such as:
  - (i) bathing,
  - (ii) eating,
  - (iii) dressing,
  - (iv) grooming,
  - (v) transferring (includes getting in and out of a tub, bed to chair, etc.),
  - (vi) mobility,
  - (vii) toileting, and
  - (viii) bowel/bladder control.
- (B) "**ADLs score in high risk range**" means the client's total weighted UCAT ADL score is ~~8~~ 10 or

more which indicates the client needs some help with ~~4~~ 5 ADLs or that the client cannot do ~~2~~ 3 ADLs at all plus the client needs some help with 1 other ADL.

(C) "**ADLs score at the high end of the moderate risk range**" means the client's total weighted UCAT ADL score is ~~6~~ 8 or ~~7~~ 9 which indicates the client needs help with ~~3~~ 4 ADLs or that the client cannot do ~~2~~ 3 ADLs at all ~~or the client cannot do 1 ADL at all and needs help with 2 ADLs.~~

(D) "**Client Support high risk**" means the client's UCAT Client Support score is 25 which indicates in the UCAT assessor's clinical ~~judgement~~ judgment that, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, ADvantage and/or State Plan Personal Care services, very little or no support is available from informal and formal sources and the client requires additional care that is not available through Medicare, Veterans Administration, or other federal entitlement programs.

(E) "**Client Support moderate risk**" means the client's UCAT Client Support score is 15 which indicates in the UCAT assessor's clinical ~~judgement~~ judgment, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, ADvantage and/or State Plan Personal Care services, support from informal and formal sources is available, but overall, it is inadequate, changing, fragile or otherwise problematic and the client requires additional care that is not available through Medicare, Veterans Administration, or other federal entitlement programs. ~~When the client's Unmet Need Score is 4 or less, the UCAT assessor must document the basis for the clinical judgement if Client Support is moderate risk.~~

(F) "**Environment high risk**" means the client's UCAT Environment score is 25 which indicates in the UCAT assessor's clinical ~~judgement~~ judgment, the physical environment is strongly negative or hazardous.

(G) "**Environment moderate risk**" means the client's UCAT Environment score is 15 which indicates in the UCAT assessor's clinical ~~judgement~~ judgment, many aspects of the physical environment are substandard or hazardous.

(H) "**IADL**" means the instrumental activities of daily living.

(I) "**IADLs score in high risk range**" means the client's total weighted UCAT IADL score is ~~8~~ 12 or more which indicates the client needs some help with ~~4~~ 6 IADLs or cannot do ~~2~~ 4 IADLs at all ~~plus needs some help with 1 other IADL.~~

(J) "**ICN**" means the client's individual care needs.

(K) "**ICN Score**" means the sum of the MSQ, Health Assessment, Nutrition, ~~ALL~~ ADL and IADL scores.

(L) **"Instrumental activities of daily living"** means those activities that reflect the client's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

- (i) shopping,
- (ii) cooking,
- (iii) cleaning,
- (iv) managing money,
- (v) using a telephone,
- (vi) doing laundry,
- (vii) taking medication, and
- (viii) accessing transportation.

(M) **"MSQ"** means the mental status questionnaire.

(N) **"MSQ score in high risk range"** means the client's total weighted UCAT MSQ score is ~~10~~ 12 or more which indicates ~~3 or more positive indications (out of six probes) of significant~~ a severe orientation-memory-concentration impairment, or ~~very significant indication of a severe~~ memory impairment.

(O) **"MSQ score at the high end of the moderate risk range"** means the client's total weighted UCAT MSQ score is ~~8~~ 10 or ~~9~~ 11 which indicates ~~2 or more positive indications of significant~~ an orientation-memory-concentration impairment, or a ~~very significant indication of~~ memory impairment.

(P) **"Nutrition high risk"** means a total weighted UCAT Nutrition score is ~~10~~ 12 or more which indicates the client has significant eating difficulties combined with poor appetite, weight loss, and/or special diet requirements.

(Q) **"Social Resources high risk"** means a total weighted UCAT Social Resources score is 15 or more which indicates the client lives alone combined with none or very few social contacts and no supports in times of need.

~~(R) **"Unmet Need Score"** is a UCAT measure of the client's need for additional services when care provided by existing Ryan White CARE Act, Indian Health Service, Medicaid NF, ADvantage and/or State Plan Personal Care services are excluded from consideration.~~

(2) **Minimum UCAT criteria.** The minimum UCAT criteria for NF level of care is:

- (A) either the ADLs or MSQ score is in the high risk range; or,
- (B) any combination of two or more of the following:
  - (i) ADLs score is at the high end of moderate risk range; or,
  - (ii) MSQ score is at the high end of moderate risk range; or,
  - (iii) IADLs score is in the high risk range; or,
  - (iv) Nutrition score is in the high risk range; and,
- (C) Client Support is moderate risk; or,

- (D) Environment is high risk; or,
- (E) Environment is moderate risk and Social Resources is in the high risk range.

(3) **NF Level of Care Services.** To be eligible for NF level of care services, meeting the minimum UCAT criteria demonstrates the individual must:

- (A) require a treatment plan involving the planning and administration of services that require skills of licensed technical or professional personnel, are provided directly or under the supervision of such personnel, and are prescribed by a physician;
- (B) have a physical impairment or combination of physical and mental impairments;
- (C) require professional nursing supervision (medication, hygiene and/or dietary assistance);
- (D) lack the ability to care for self or communicate needs to others;
- (E) require medical care and treatment to minimize physical health regression and deterioration;
- (F) require care that is not available through family and friends, Medicare, Veterans Administration, or other federal entitlement program with the exception of Indian Health Service; and,
- (G) require care that cannot be met through Medicaid state plan services, including Personal Care, if financially eligible.

*[OAR Docket #03-605; filed 4-8-03]  
(format accepted 4-10-03)*

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

*[OAR Docket #03-606]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

- Subchapter 15. Personal Care Services
- 317:35-15-8. [AMENDED]
- 317:35-15-8.1. [NEW]
- 317:35-15-13. [REVOKED]
- 317:35-15-13.1. [NEW]
- 317:35-15-13.2. [NEW]

**(Reference APA WF # 02-20)**

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Senate Bill 732 of the 2<sup>nd</sup> Session of the 48<sup>th</sup> Legislature; Sections 1025.1 through 1025.3 of Title 56 of Oklahoma Statutes

**DATES:**

**Adoption:**

February 13, 2003

**Approved by Governor:**

April 1, 2003

**Effective:**

Immediately upon Governor's approval

**Expiration:**

Effective through July 14, 2004, unless superseded by another rule or disapproved by the Legislature.

# Emergency Adoptions

## 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 revisions that allow the Agency to comply with Sections 1025.1 through 1025.3 of Title 56 of the Oklahoma Statutes. Legislation approved in the Senate Bill 732 of the 2<sup>nd</sup> Session of the 48<sup>th</sup> Legislature expanded the state statutes containing regulations for the Community Services Worker Registry to cover Medicaid Personal Care services.

## ANALYSIS:

Medical Assistance for Adults and Children-Eligibility, Personal Care specific, rules are revised to comply with recent revisions to Sections 1025.1 through 1025.3 of Title 56 of the Oklahoma Statutes. This legislation expanded the state statutes containing regulations for the Community Services Worker Registry to cover Medicaid Personal Care services. Additionally, in order to separate policy and procedures for the agency personal care providers from those for the individual personal care providers, three new policy sections have been written; the revisions are necessary to provide clarification and instruction for DHS and OHCA staff, the Long Term Care Authority, Personal Care providers, and Medicaid recipients. Other revisions: (1) update procedures to current practice; (2) add or update references to OHCA and DHS policy; and, (3) update form names and numbers used by the LTC nurse in the medical eligibility process. Revisions are needed to amend agency rules to comply with Sections 1025.1 through 1025.3 of Title 56 of Oklahoma Statutes.

## CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

**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 15. PERSONAL CARE SERVICES

### 317:35-15.8. Agency Personal Care service management

(a) The LTC nurse informs the client of the Agency Personal Care service contractors in the local area who are contracted to deliver Personal Care services ~~to obtain and obtains~~ the client's informed choice of agencies. The client chooses a primary and secondary agency contractor from a list of qualified agencies. If the client and/or family declines to make a choice, the nurse uses a rotating system to select an agency contractor from a list of all local certified provider agencies. The LTC nurse documents the name of the selected agency ~~on the DHS form AG-6, Personal Care Service Plan.~~

(b) ~~When the area nurse, or designee, notifies the county office of medical eligibility (MS-52) and the county office staff determines financial eligibility, the LTC nurse notifies the client and contractor to begin care plan and service plan implementation. The nurse maintains the original plans and forwards a copy of the approved Personal Care plan and service plan to the chosen contractor within one working day of notice of approval. The client's Personal Care service plan and care plan includes:~~

- (1) ~~goals and tasks;~~
- (2) ~~the number of authorized Personal Care units (hours) per week;~~

- (3) ~~frequency of service visits;~~
- (4) ~~the effective date for services; and~~
- (5) ~~the certification period for the care plan and service plan.~~

(b) After medical and financial eligibility have been established, the LTC nurse reviews the care plan and service plan with the client and contractor and notifies the client and agency contractor to begin care plan and service plan implementation. The nurse maintains the original plans and forwards a copy of the UCAT, the Personal Care Planning Schedule, the approved Personal Care plan and the service plan to the chosen agency contractor and client within one working day of notice of approval. The agency, prior to placing a PCA in the client's home, initiates an OSBI background check, checks the DHS Community Services Worker Registry in accordance with Section 1025.2 of Title 56 of the Oklahoma Statutes, and, as appropriate, checks the Certified Nurse Aid Registry.

(c) ~~The client chooses a primary and secondary agency contractor, from a list of qualified agencies, provided by the LTC nurse [see OAC 317:35-15-13(1)]. When an individual PCA is selected, the DHS nurse explains DHS Form Adm 66, Authorization for Withholding of FICA Tax in Personal Care, and obtains the client's signature. The LTC nurse reviews the care plan and service plan with the client and the PCA or makes the referral to the agency selected by the client.~~

(d) ~~With the exception of clients served by a Home and Community Based Waiver, the~~ The LTC nurse is the case manager and monitors the care plan and service plan for clients with an individual PCA. Written information is provided to the client on the method used to contact the LTC nurse. The LTC nurse contacts the client within 30 calendar days of submitting the care plan and service plan to the agency in order to make sure that services have been implemented and the needs of the client are being met. The LTC nurse makes a home visit at a minimum of every 180 days beginning within 90 days of the date of service initiation for all individuals receiving Personal Care for the purpose of assessing the client's satisfaction with their care and for evaluating the plan of care for adequacy of goals and units allocated. Whenever a home visit is made, the LTC nurse communicates to the home health agency the results of the visit as documented on the Personal Care Services Progress Notes, DHS form AG-22. Requests by the agency for increases in the time allocated in the care plan and service plan are submitted to the LTC nurse and approved by the area nurse, or designee, prior to implementation.

(d) When the service provider returns the service plan with a start date, the LTC nurse or the AA notifies the county social worker in writing of the number of units and the start date of PC services.

(e) ~~For clients who select an agency contractor, with the exception of clients serviced by a Home and Community Based Waiver, the LTC nurse reviews the care plan and service plan with the client and forwards a copy of the UCAT, care plan and service plan to the agency. All requests by the agency for increases in the time allocated in the care plan and service plan are submitted to the LTC nurse and approved by the area nurse, or designee, prior to implementation. The LTC nurse makes a~~

home visit at a minimum of every 180 days for all individuals receiving Personal Care for the purpose of surveying the client's satisfaction with their care and for evaluating the plan of care for adequacy of goals and units allocated. Whenever a home visit is made, the LTC nurse communicates with the home health agency the results of the visit as documented on the Personal Care Services Progress Notes, DHS form AG-22. The LTC nurse contacts the client within 30 calendar days of submitting the care plan and service plan to the agency in order to assure that services have been implemented and the needs of the client are being met.

(fe) Personal Care is provided under the State Plan if a client requires Personal Care and is approved for the ADvantage waiver. It is the ADvantage case manager's responsibility to develop and monitor the care plan and service plan. The ADvantage case manager reviews the service plan with the client and forwards a copy of the service plan to the agency. All requests by the agency for increases in the time allocated in the service plan are submitted to the case manager and must be approved by the AA, or designee, prior to implementation. The ADvantage case manager contacts the client monthly and makes a home visit at a minimum of every 90 days and the home care agency nurse makes a home visit at a minimum of every 180 days to evaluate the client. Case manager and home care agency nurse visits are for the purpose of surveying the client's satisfaction with their care and for evaluating the plan of care for adequacy of goals and units allocated. The ADvantage case manager contacts the client within 5 calendar days of service plan certification by the AA in order to assure make sure that services have been implemented. The ADvantage case manager contacts the client within 30 calendar days of service plan certification by the AA in order to assure make sure that the needs of the client are being met. Any person approved under the ADvantage waiver is eligible to receive any Medicaid service including those in the State Plan (Refer to OAC 317:35-17).

(gf) With the exception of clients served by the ADvantage or any other Home and Community Based Services (HCBS) Waiver, the LTC nurse is the case manager for Personal Care (PC) clients. Clients served by the ADvantage or any other HCBS Waiver have case management services provided through these waivers. This function involves advocacy, service planning, coordination, monitoring and problem solving with service providers and with families in the provision of services.

(hg) Since PC services are intended to supplement and support existing informal care, use of informal supports as PCAs may jeopardize the informal support system [see OAC 317:35-15-2(a)]. Under certain circumstances, the use of informal supports as PCAs may be the only available option for providing services to the client. The case manager authorizes the use of informal supports for the PC program. The provider agency may only employ informal supports with the written agreement of the interdisciplinary team.

(1) One or more of the following conditions as determined by the LTC nurse or PC provider agency must exist in order for informal supports to be approved as PCA service providers:

(A) The informal support is the only person who has the special ability and willingness to provide care due to the complexity of care need; or,

(B) The client lives in a remote, rural area that has no personal care providers; or

(C) No other persons are available to provide PCA services in the community where the client lives.

(2) The PC provider agency or, when an individual PCA is used, the LTC nurse provides written justification on the plan of care for use of a family member as the PCA.

(3) Whenever informal supports provide PCA services, care plan and service plan development must include components to prevent failure/burnout of the informal supports and assurances that the client is receiving the care required.

(A) Components built into the care plan to prevent failure/burnout of informal supports may include, but are not limited to, the following:

(i) an informal support, other than the one providing PCA services, provides services; and

(ii) home delivered meals, adult day care, or formal PCA services are provided.

(B) The case manager routinely reviews the care plan to evaluate whether the client's needs are being met in accordance with the plan and to assess the stability of the informal support system. The case manager may increase the frequency of care plan reviews for clients receiving PCA services from an informal support.

(i) When the service provider returns the service plan with a start date, or when a PCA begins providing services, the LTC nurse or the AA notifies the county social worker of the PC provider (agency or individual), the number of units (hours), and the start date. DHS Form K-13 may be used for this purpose. The social worker will input the authorization on the computer system within ten (10) working days of the date of receipt of the information. The LTC nurse also provides a copy of the care plan and service plan to the client.

### **317:35-15-8.1. Agency Personal Care contractors; billing, and problem resolution**

The Administrative Agent (AA) certifies qualified agencies and facilitates the execution of contracts on behalf of OHCA with qualified agencies for provision of Personal Care services. At contract renewal, the AA re-evaluates provider qualifications and facilitates execution of renewal contracts on behalf of the OHCA. OHCA will check the list of providers that have been barred from Medicare/Medicaid participation to ensure that the provider agency is not listed.

(1) **Payment for Personal Care.** Payment for Personal Care is generally made for care in the client's own home. A rented apartment, room or shelter shared with others is considered "own home". A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., does not

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constitute a suitable substitute home. Personal Care may not be approved if the client lives in the PCA's home except with the interdisciplinary team's written approval. With DHS area nurse approval, or for ADvantage waiver clients, with service plan authorization and ADvantage Program Manager approval, Personal Care services may be provided in an educational or employment setting to assist the client in achieving vocational goals identified on the service plan.

(A) **Use of agency contractors for Personal Care.** To provide Personal Care services, an agency must be licensed by the Oklahoma State Department of Health, meet certification standards identified by DHS or the Administrative Agent (AA), and possess a current Medicaid contract.

(B) **Reimbursement.** Personal Care payment for a client is made according to the number of units of service identified in the service plan.

(i) The unit amounts paid to agency contractors is according to the established rates. A service plan will be developed for each eligible individual in the home and units of service assigned to meet the needs of each client. The service plans will combine units in the most efficient manner to meet the needs of all eligible persons in the household.

(ii) The contractor payment fee covers all Personal Care services included on the service and care plans developed by the LTC nurse or ADvantage case manager. Payment is made for direct services and care of the eligible client(s) only. The area nurse, or designee, authorizes the number of units of service the client receives each month.

(2) **Problem resolution.** If the client is dissatisfied with the agency or the assigned PCA, the client contacts the LTC nurse for problem resolution. If the situation cannot be resolved, the client has the right to appeal to the OHCA. (Refer to OAC 317:2). For clients receiving ADvantage services, their case manager should be contacted for the problem resolution. If the problem remains unresolved, the contact may be made with the Consumer Inquiry System (CIS) at the Long Term Care Authority.

### 317:35-15-13. **Personal Care contractor; billing, training, and program administration** [REVOKED]

The Department of Human Services executes initial agreements with qualified individuals for provision of Personal Care services as defined in OAC 317:35-15-2. The contract renewal for PCA is the responsibility of the OHCA fiscal agent. The Administrative Agent (AA) certifies qualified agencies and facilitates the execution of agreements on behalf of OHCA with qualified agencies for provision of Personal Care services. At contract renewal for agency Personal Care providers, the AA re-evaluates provider qualifications and facilitates execution of renewal agreements on behalf of the OHCA.

(1) **Payment for Personal Care.** Payment for Personal Care is generally made for care in the client's own home. A rented apartment, room or shelter shared

with others is considered "own home". A facility which meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., does not constitute a suitable substitute home. Personal Care may not be approved if the client lives in the PCA's home except with Aging Services Division approval. The LTC nurse, with input from the social worker, submits a written request for an exception to the rule for the client receiving Personal Care while living in the PCA's home. Documentation included with the exception request shall include the name and case number of the client, the name and address of the potential PCA, the client's diagnosis, physical condition and care needs and the reason for the request. The potential PCA must meet the minimum requirements under (2) of this subsection. With Aging Services Division approval, or for ADvantage waiver clients, with service plan authorization and ADvantage Program Manager approval, Personal Care services may be provided in an educational or employment setting to assist the client in achieving vocational goals identified on the service plan. The LTC or Administrative Agent (AA) nurse submits a written request to the area nurse for an exception to the rule restricting provision of Personal Care to the home setting. Documentation included with the exception request shall include the name and case number of the client, the client's vocational goal(s) and goal justification, the name of the potential PCA or PC agency, the client's diagnosis and care needs in the vocational setting, the number of units of care requested per week in the vocational setting and the vocational setting name and address.

(A) **Use of agency contractors for Personal Care.** To provide Personal Care service in a client's home, an agency must be licensed by the Oklahoma State Department of Health, meet certification standards identified by DHS or the Administrative Agent (AA), and possess a current Medicaid contract. Clients will be provided a list of agencies from which to choose. If the client is unable to make a choice, the LTC nurse or the Administrative Agent makes the selection for the client using a rotating system. An agency's contract can be terminated if the agency:

- (i) fails to maintain licensure; or
- (ii) violates terms of the contract; or
- (iii) fails to maintain certification standards; or
- (iv) fails to provide the services outlined in the service and care plans.

(B) **Payment schedule for agency/individual Personal Care contractors.** Personal Care payment for a categorically needy client or for a medically needy client is made according to the number of units of service identified in the service plan.

(i) The unit amounts paid to agency and individual contractors is according to the established rates. A service plan will be developed for each

eligible individual in the home and units of service assigned to meet the needs of each client. The service plans will combine units in the most efficient manner to meet the needs of all eligible persons in the household. PCAs bill for services using the HCFA 1500. Agencies use the HCFA 1500 form and procedure code W4802 to bill for agency personal care.

(ii) From the total amounts billed by the PCA in (i) of this subparagraph, the OHCA (acting as agent for the client employer) withholds the appropriate percentage of FICA tax and sends it to the Internal Revenue Service as the individual contractor's contribution toward Social Security coverage. To assure that the individual contractor's social security account may be properly credited, it is vital that the individual contractor's social security number be entered correctly on each claim. In order for the OHCA to withhold FICA tax, the LTC nurse must obtain DHS Form Adm 66, Authorization for Withholding of FICA Tax in Personal Care, from the client as soon as the area nurse, or designee, has approved Personal Care. Form Adm 66 must be in the case record and a contract must be on file with the fiscal agent before the individual contractor's first claim can be submitted.

(iii) The contractor payment fee covers all Personal Care services included on the service and care plans developed by the LTC nurse. Payment is made for direct services and care of the eligible client(s) only. The area nurse, or designee, authorizes the number of units of service the client receives each week.

(iv) A client may select more than one individual contractor. This may be necessary as indicated by the service and care plans.

(v) The individual contractor may care for several households during one week, as long as the daily number of paid service units do not exceed eight per day. The total number of hours per week cannot exceed 40.

(C) **Release of wage and/or employment information for individual contractors.** Any inquiry received by the local office requesting wage and/or employment information for an individual Personal Care contractor will be forwarded to the OHCA, Claims Resolution and Monitoring.

(2) **Client selection of individual PCA.** Clients and/or family members recruit, interview, conduct reference checks, and select the individual to be considered as an individual contractor. An individual contractor applicant must have a background check performed by the Oklahoma State Bureau of Investigation (OSBI). The results of the background check determine whether a person will be permitted to work as an individual Personal Care contractor. [For selection of agency Personal Care contractors, refer to OAC 317:35-15-8(a)].

(A) **Individuals eligible to serve as individual Personal Care Assistants.** Payment is made for Personal Care Services to an individual who:

- (i) is at least 18 years of age;
- (ii) has no pending notation related to abuse, neglect or exploitation as reported by the Oklahoma State Department of Health Nurse Aide Registry;
- (iii) has not been convicted of a crime as outlined in Title 63 of Oklahoma Statutes, Sections 1-1950;
- (iv) demonstrates the ability to understand and carry out assigned tasks;
- (v) is not a legally responsible family member (spouse or parent of a minor child) of the client being served;
- (vi) has a verifiable work history and/or personal references, verifiable identification, and
- (vii) meets any additional requirements as outlined in the contract and certification requirements with the Oklahoma Health Care Authority.

(I) An Oklahoma State Bureau of Investigation (OSBI) background check will be initiated prior to the PCA beginning work. The LTC nurse will initiate the request for the check to the Personal Care Program Administrator by the close of business the day the application is taken. Only Aging Services Division may forward requests to OSBI and authorize payment. The Aging Services Division will notify the LTC nurse who initiated the request of the results of the OSBI background check. Aging Services Division will enter the names of ineligible PCAs on the "UNEMNT" mailbox.

(H) Information regarding criminal records is confidential and shall not be released or disclosed to any person without the permission of the individual to whom the records pertain. Files containing criminal records from OSBI background checks will be kept confidential in the Aging Services Division. Criminal records will be destroyed after one year from the end of employment of the person to whom such records relate. This also applies to PCAs who have had their contracts/agreements terminated because of a criminal record. Aging Services Division may release the results of their determination to home health care agencies with the written consent of the individual.

(III) When the client selects the individual to be considered as the Personal Care Assistant, the client notifies the county. The LTC nurse makes an appointment for the individual to come to the county office for orientation and determination that the individual meets the

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minimum qualifications for Personal Care Assistant. The PCA may begin work after completing a contract and a determination of competency to carry out the plan of care is made by the LTC nurse. The LTC nurse notifies the social worker of the service effective date. The county forwards the original contract to the fiscal agent, who will be responsible for annual renewal. Once the client selects the PCA, the social worker updates the authorization file.

(B) **Individuals ineligible to serve as Personal Care Assistants.** Payment for Personal Care services may not be made to an individual who is a legally responsible family member of the client to whom he/she is providing personal care services.

(i) The DHS Director may give approval for an exception to rules prohibiting payment for Personal Care to a legally responsible family member of the client being served when no other PCA is available, available PCAs are unable to provide care to the client or the needs of the client are so extensive that the legally responsible family member who provides the care is prohibited from working outside the home due to the client's need for care. The LTC nurse submits requests for consideration to grant an exception to the rule prohibiting a legally responsible family member from providing care to the Aging Services Division who forwards the requests to the DHS Director. The Aging Services Division notifies the county of the Director's decision and, if approved by the Director, provides special instructions for filing the claims. The DHS Director annually reviews the decision to continue payment.

(ii) Payment cannot be made to a DHS or OHCA employee. Payment cannot be made to a family member of a DHS employee who works in the same county without Aging Services Division approval.

(iii) When a family member relationship exists between a DHS employee and PCA in the same county, the LTC nurse and social worker submits a memo to Aging Services Division outlining the names of the individuals, the relationship, the responsibility of the DHS staff member and a recommendation for consideration. The Aging Services Division notifies the county of the authorization in writing.

(iv) If it is determined that an employee is interfering in the process of providing Personal Care Services for personal or family benefit, he/she will be subject to disciplinary action.

(3) **Orientation of the Personal Care Assistant.** When a client selects an individual, the LTC nurse contacts the individual to report to the county office to complete DHS form AG-23, Application for Independent

Medicaid Personal Care Contractor, and for a determination of qualifications and orientation. This process is the responsibility of the LTC nurse.

(A) Initial interaction between the LTC nurse and the PCA includes, at a minimum:

(i) a determination that the PCA has met the qualifying criteria for personal care service provision and has the knowledge and skill to carry out the assigned task on the plan of care as documented on DHS form AG-24, Documentation Of Qualifications To Provide Personal Care Service.

(ii) discussion of the role and responsibilities of the PCA;

(iii) discussion of the needs of the client and the tasks included on the plan of care, DHS form AG-4, Personal Care Plan;

(iv) discussion of the employer/employee relationship between the client and PCA;

(v) assistance in completing OHCA form 0026, Personal Care Program Individual Contract;

(vi) discussion of the method of filing claim for payment and record maintenance;

(vii) discussion of the date service is to begin, the number of units (hours) and the days per week;

(viii) discussion of the use of DHS form AG-5, Personal Care Planning Schedule and DHS form AG-6, Personal Care Service Plan;

(ix) FICA information; and

(x) when and how to contact the LTC nurse and social worker.

(B) The PCA cannot begin work until he/she has been interviewed and oriented by the LTC nurse, has initiated a contract, the effective service date has been established and the OSBI background check has been initiated.

(4) **Training of Personal Care Assistants.** It is the responsibility of the LTC nurse to assure for each client, that the PCA has the training needed to carry out the plan of care prior to service initiation.

(5) **Home visit frequency.** The LTC nurse determines the frequency of home visits based upon the plan of care and the needs of the client. The home visit must be made a minimum of every 180 days. The LTC nurse documents the nursing goals and frequency of home visits in the Personal Care progress notes. The frequency of the home visit is based upon the following criteria:

(A) the ability of the client or someone acting on the client's behalf to supervise and monitor the PCA's performance in service delivery;

(B) the stability of the client's health such as whether there exists a stable chronic condition, an unstable chronic condition or unstable condition as a result of an acute episode;

(C) the stability of the client and PCA relationship; and,

(D) the care plan.

(6) **Problem resolution related to the performance of the Personal Care Assistant.** When it comes to the

attention of the LTC nurse or social worker that there is a problem related to the performance of the PCA, a conference is held between the client, LTC nurse and social worker.

(A) **Counseling.** The LTC nurse will counsel the PCA regarding problems with his/her performance. A follow up letter is sent to the PCA stating the reason for counseling and the expected change in performance. Notice is also given that continued problems will result in termination. Counseling is considered when the staff believe that counseling will result in improved performance. The LTC nurse sends a copy of the PCA letter to the client and files a copy in the county PCA's file and the client's case record maintained by the nurse.

(B) **Termination of the PCA Provider Agreement.** The process for termination of the PCA Provider Agreement is given in this subparagraph.

(i) A recommendation for the termination of a PCA occurs when:

(I) a PCA's performance is such that his/her continued participation in the program could pose a threat to the health and safety of clients; or

(II) the PCA failed to comply with the expectations outlined in the PCA Provider Agreement and counseling is not appropriate or has not been effective.

(ii) The LTC nurse develops a memo recommending termination and submits it to the Aging Services Division. The memo shall include a specific description of the problems, the specific contract violation, facts substantiating the problems, any actions taken previously to correct the problems and a proposed effective date of termination of the Personal Care Program Individual Contract. When the problem is related to allegations of abuse, neglect, or exploitation, Adult Protective Services, State Attorney General's Medicaid Unit, and Oklahoma State Department of Health are notified by the LTC nurse. The LTC nurse or county director suspends all services of the PCA immediately.

(iii) Upon review of the information submitted, the Aging Services Division will take one of the actions in (I) – (III) of this unit.

(I) Approve the recommendation of termination of the Provider Agreement. A letter is prepared advising the PCA of the reason for termination of the Provider Agreement, the effective date of termination and his/her opportunity to request a reconsideration of this decision within ten days of receipt of the letter. The letter is sent certified mail with copies to the LTC nurse, county office, client, and OHCA, Attn: Service Contracts Operations. A copy of the

letter is also sent to the Developmental Disabilities Services Division. Aging Services Division will enter the termination decision on the AUNEMNT@ file.

(II) Deny the recommendation for termination of the provider agreement and give written notification to the LTC nurse of the reason.

(III) Refer the case to the Office of Inspector General for investigation by completion of DHS form ARD-1, Referral Form. In this instance, the investigation is carried out as expeditiously as possible. When the results of the investigation are received, the Aging Services Division takes the appropriate action as outlined in subunits (I) or (II) of this unit.

(C) **Process for reconsideration of decision to terminate a PCA.** The PCA may submit a written request for reconsideration of the decision to terminate to the Aging Services Division within ten working days of receipt of the letter of notice of termination of the provider agreement. A committee of three supervisory staff members of the Aging Services Division will review the request for reconsideration with all information pertaining to the case. The committee will make a recommendation to the Aging Services Division Administrator who makes the final decision. The Division Administrator issues a certified letter to the PCA notifying him/her of the decision. If the original decision is reversed, notice of the reversal will be sent to all offices and persons notified of the original decision to terminate.

## **317:35-15-13.1. Individual Personal Care service management**

(a) An individual PCA may be authorized to provide PC services when it is documented to be in the best interest of the client to have an individual PCA or when there are no agency contractors available in the local area. When an individual PCA is selected by the client, the DHS nurse explains OHCA form HCA-66, Authorization for Withholding of FICA Tax in Personal Care, to the client and obtains his/her signature. OHCA will check the list of providers that have been barred from Medicare/Medicaid participation to ensure that the individual provider is not listed.

(b) After medical and financial eligibility have been established, the LTC nurse reviews the care plan and service plan with the client and individual PCA and notifies the client and PCA to begin care plan and service plan implementation. The nurse maintains the original plans and forwards a copy of the approved Personal Care plan and service plan to the chosen PCA within one working day of notice of approval.

(c) The LTC nurse is the case manager and monitors the care plan and service plan for clients with an individual PCA. The LTC nurse makes a home visit at a minimum of every 180 days beginning within 90 days of the date of service initiation for all individuals receiving Personal Care for the purpose of surveying the client's satisfaction with their care and for evaluating

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the plan of care for adequacy of goals and units allocated. Requests for increases in the time allocated in the care plan and service plan are submitted to the LTC nurse and approved by the area nurse, or designee, prior to implementation.

(d) Personal Care is provided under the State Plan if a client requires Personal Care and is approved for the ADvantage waiver. It is the ADvantage case manager's responsibility to develop and monitor the care plan and service plan. The ADvantage case manager reviews the service plan with the client and forwards a copy of the service plan to the individual PCA. Requests for increases in the time allocated in the service plan are submitted to the case manager and must be approved by the AA, or designee, prior to implementation. The ADvantage case manager contacts the client monthly and makes a home visit at a minimum of every 90 days and the LTC nurse makes a home visit at a minimum of every 180 days for supervision. Case manager and LTC nurse visits are for the purpose of assessing the client's satisfaction with their care and for evaluating the plan of care for adequacy of goals and units allocated. The ADvantage case manager contacts the client within 5 calendar days of service plan certification by the AA in order to make sure that services have been implemented. The ADvantage case manager contacts the client within 30 calendar days of service plan certification by the AA in order to make sure that the needs of the client are being met. Any person approved under the ADvantage waiver is eligible to receive any Medicaid service including those in the State Plan (Refer to OAC 317:35-17).

(e) With the exception of clients served by the ADvantage or any other Home and Community Based Services (HCBS) Waiver, the LTC nurse is the case manager for Personal Care (PC) clients. Clients served by the ADvantage or any other HCBS Waiver have case management services provided through these waivers. This function involves advocacy, service planning, coordination, monitoring and problem solving with service providers and with families in the provision of services.

(f) Since PC services are intended to supplement and support existing informal care, use of informal supports as PCAs may jeopardize the informal support system [see OAC 317:35-15-2(a)]. Under certain circumstances, the use of informal supports as PCAs may be the only available option for providing services to the client. The interdisciplinary team authorizes the use of informal supports for the PC program.

(1) One or more of the following conditions as determined by the LTC nurse must exist in order for informal supports to be approved as PCA service providers:

(A) The informal support is the only person who has the special ability and willingness to provide care due to the complexity of care needed; or,

(B) The client lives in a remote, rural area that has no personal care providers; or

(C) No other persons are available to provide PCA services in the community where the client lives.

(2) The interdisciplinary team provides written justification on the plan of care for use of a family member as the PCA.

(3) Whenever informal supports provide PCA services, care plan and service plan development must include components to prevent failure/burnout of the informal supports and assurances that the client is receiving the care required.

(A) Components built into the care plan to prevent failure/burnout of informal supports may include, but are not limited to, the following:

(i) an informal support, other than the one providing PCA services, provides services; and

(ii) home-delivered meals, adult day care, or formal PCA services are provided.

(B) The case manager routinely reviews the care plan to evaluate whether the client's needs are being met in accordance with the plan and to assess the stability of the informal support system. The case manager may increase the frequency of care plan reviews for clients receiving PCA services from an informal support.

### **317:35-15-13.2. Individual Personal Care contractor: billing, training, and problem resolution**

The Department of Human Services initiates initial contracts with qualified individuals for provision of Personal Care services as defined in OAC 317:35-15-2. The contract renewal for the PCA is the responsibility of the Oklahoma Health Care Authority (OHCA).

(1) **Payment for Personal Care.** Payment for Personal Care is generally made for care in the client's own home. A rented apartment, room or shelter shared with others is considered "own home". A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., does not constitute a suitable substitute home. Personal Care may not be approved if the client lives in the PCA's home except with the interdisciplinary team's written approval. The potential individual PCA must meet the minimum requirements under (2) of this subsection. With DHS area nurse approval, or for ADvantage waiver clients, with service plan authorization and ADvantage Program Manager approval, Personal Care services may be provided in an educational or employment setting to assist the client in achieving vocational goals identified on the service plan.

(A) **Reimbursement.** Personal Care payment for a client is made according to the number of units of service identified in the service plan.

(i) The unit amounts paid to individual contractors is according to the established rates. A service plan will be developed for each eligible individual in the home and units of service assigned to meet the needs of each client. The service plans will combine units in the most efficient manner to meet the needs of all eligible persons in the household.

(ii) From the total amounts billed by the individual PCA in (i) of this subparagraph, the OHCA (acting as agent for the client-employer) withholds the appropriate percentage of FICA tax and sends it to the Internal Revenue Service as the individual contractor's contribution toward Social Security coverage. To assure that the individual contractor's social security account may be properly credited, it is vital that the individual contractor's social security number be entered correctly on each claim. In order for the OHCA to withhold FICA tax, the LTC nurse must obtain a signed OHCA Form HCA-66, Authorization for Withholding of FICA Tax in Personal Care, from the client as soon as the area nurse, or designee, has approved Personal Care. A copy of the signed HCA-66 must be in the case record. A signed OHCA-0026, Personal Care Program Individual Contract must be on file with the OHCA before the individual contractor's first claim can be submitted.

(iii) The contractor payment fee covers all Personal Care services included on the service and care plans developed by the LTC nurse or ADvantage case manager. Payment is made for direct services and care of the eligible client(s) only. The area nurse, or designee, authorizes the number of units of service the client receives each month.

(iv) A client may select more than one individual contractor. This may be necessary as indicated by the service and care plans.

(v) The individual contractor may provide Medicaid Personal Care services for several households during one week, as long as the daily number of paid service units do not exceed eight per day. The total number of hours per week cannot exceed 40.

**(B) Release of wage and/or employment information for individual contractors.** Any inquiry received by the local office requesting wage and/or employment information for an individual Personal Care contractor will be forwarded to the OHCA, Claims Resolution.

**(2) Client selection of individual PCA.** Clients and/or family members recruit, interview, conduct reference checks, and select the individual to be considered as an individual contractor. An individual contractor applicant must have a background check performed by the Oklahoma State Bureau of Investigation (OSBI). The results of the background check determine whether a person will be permitted to work as an individual Personal Care contractor. According to Section 1025.2 of Title 56 of the Oklahoma Statutes, before the client employer makes an offer to employ or contract with a Medicaid Personal Care Assistant applicant to provide Personal Care Services to a person who receives state Medicaid Personal Care Services, the DHS LTC nurse, acting for the client, must check the DHS Community Services Worker Registry to determine if the name of the applicant

seeking employment or contract has been entered. The DHS LTC nurse must also check the Certified Nurse Aid Registry. The DHS LTC nurse must affirm that the applicant's name is not contained on either registry. The LTC nurse will notify the OHCA if the applicant is on the registry.

**(A) Persons eligible to serve as individual Personal Care Assistants.** Payment is made for Personal Care Services to an individual who:

(i) is at least 18 years of age,

(ii) has no pending notation related to abuse, neglect or exploitation as reported by the Oklahoma State Department of Health Nurse Aide Registry,

(iii) is not included on the DHS Community Services Worker Registry in accordance with Section 1025.2 of Title 56, of Oklahoma Statutes,

(iv) has not been convicted of a crime as outlined in Title 63 of Oklahoma Statutes, Sections 1-1950 as determined by an OSBI background check,

(v) demonstrates the ability to understand and carry out assigned tasks,

(vi) is not a legally responsible family member (spouse or parent of a minor child) of the client being served,

(vii) has a verifiable work history and/or personal references, verifiable identification, and

(viii) meets any additional requirements as outlined in the contract and certification requirements with the Oklahoma Health Care Authority.

**(B) Persons ineligible to serve as Personal Care Assistants.** Payment from Medicaid funds for Personal Care services may not be made to an individual who is a legally responsible family member of the client to whom he/she is providing personal care services.

(i) The DHS Director may give approval for payment from DHS state funds for Personal Care to a legally responsible family member of the client being served when no other PCA is available, available PCAs are unable to provide care to the client, or the needs of the client are so extensive that the legally responsible family member who provides the care is prohibited from working outside the home due to the client's need for care.

(ii) Payment cannot be made to a DHS or OHCA employee. Payment cannot be made to an immediate family member of a DHS employee who works in the same county without Aging Services Division approval. When a family member relationship exists between a DHS LTC nurse and a PCA in the same county, the LTC nurse cannot manage services for a client whose individual provider is a family member of the LTC nurse.

(iii) If it is determined that an employee is interfering in the process of providing Personal Care

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Services for personal or family benefit, he/she will be subject to disciplinary action.

**(3) Orientation of the Personal Care Assistant.**

When a client selects an individual PCA, the LTC nurse contacts the individual to report to the county office to complete the ODH form 805, Uniform Employment Application for Nurse Aide Staff, and the DHS form DDS-39, Employment Application Supplement, and for a determination of qualifications and orientation. This process is the responsibility of the LTC nurse. The PCA can begin work when:

- (A) he/she has been interviewed by the client,
- (B) he/she has been oriented by the LTC nurse,
- (C) he/she has executed a contract (OHCA-0026) with the OHCA,
- (D) the effective service date has been established,
- (E) the Community Service Worker Registry has been checked and the PCA's name is not on the Registry,
- (F) the Oklahoma State Department of Health Nurse Aide Registry has been checked and no notations found, and
- (G) the OSBI background check has been completed.

**(4) Training of Personal Care Assistants.** It is the responsibility of the LTC nurse to make sure for each client, that the PCA has the training needed to carry out the plan of care prior to service initiation.

**(5) Problem resolution related to the performance of the Personal Care Assistant.** When it comes to the attention of the LTC nurse or social worker that there is a problem related to the performance of the PCA, a counseling conference is held between the client, LTC nurse and social worker. The LTC nurse will counsel the PCA regarding problems with his/her performance. Counseling is considered when the staff believe that counseling will result in improved performance.

**(6) Termination of the PCA Provider Agreement.**

(A) A recommendation for the termination of a PCA's contract is submitted to the OHCA and the services of the PCA are suspended immediately when:

- (i) a PCA's performance is such that his/her continued participation in the program could pose a threat to the health and safety of the client or others; or
- (ii) the PCA failed to comply with the expectations outlined in the PCA Provider Agreement and counseling is not appropriate or has not been effective; or
- (iii) a PCA's name appears on the DHS Community Services Worker Registry, even though his/her name may not have appeared on the Registry at the time of application or hiring.

(B) The LTC nurse makes the recommendation for the termination of the PCA to the OHCA Legal Division with a copy to the DHS State Office Aging Services Division. The memo shall include a specific

description of the problems, the specific contract violation, facts substantiating the problems, any actions taken previously to correct the problems and a proposed effective date of termination of the Personal Care Program Individual Contract. When the problem is related to allegations of abuse, neglect, or exploitation, DHS Adult Protective Services, State Attorney General's Medicaid Unit, the OHCA, and the Oklahoma State Department of Health are notified by the LTC nurse.

(C) The OHCA will review the memorandum and take one of the following actions:

- (i) Approve the recommendation of termination of the Personal Care contract.
- (ii) Deny the recommendation for termination of the provider agreement and give written notification to the LTC nurse of the reason for the denial.
- (iii) Refer the case to the Office of Inspector General for investigation by completion of DHS form ARD-1, Referral Form. In this instance, the investigation is carried out as expeditiously as possible. When the results of the investigation are received, the Aging Services Division takes the appropriate action as outlined in units (i) or (ii) of this subparagraph.

(D) When the problem is related to allegations of abuse, neglect or exploitation, the LTC nurse follows notice and due process as outlined in OAC 340:100-3-39(d)(2) and (3). The PCA is afforded notice as outlined in OAC 340:100-3-39.

*[OAR Docket #03-606; filed 4-8-03]  
(format accepted 4-10-03)*

### TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES DIVISION

*[OAR Docket #03-726]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 5. Client Services  
Part 3. Service Provisions  
340:100-5-26.2 [NEW]  
(Reference APA WF # 03-09)

**AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Section 1415.1 of Title 10 of the Oklahoma Statutes.

**DATES:**

**Adoption:**

February 25, 2003

**Approved by Governor:**

April 10, 2003

**Effective:**

Immediately upon Governor's approval.

**Expiration:**

Effective through July 14, 2004, 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 as the agency finds Emergency approval is requested as the Agency finds an imminent peril to the preservation of the public welfare exists as DDS service recipients along with their personal support teams need guidance regarding service delivery to service recipients diagnosed as having a terminal illness so they can receive appropriate services at the end of their lives.

**ANALYSIS:**

Proposed new rules are established to give guidance to Developmental Disabilities Services Division (DDSD) staff, service recipients, and providers regarding service delivery when a service recipient is diagnosed as having a terminal illness. OAC 340:100-5-26.2 is established to clarify DDSD staff and provider roles in the event a person served elects hospice services.

**CONTACT PERSON:**

Dena Thayer at (405)521-4326

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

**SUBCHAPTER 5. CLIENT SERVICES**

**PART 3. SERVICE PROVISIONS**

**340:100-5-26.2. End-of-life issues**

(a) **Purpose.** The rules in this Section are established to support the decisions of persons receiving services from the Developmental Disabilities Services Division (DDSD) regarding end-of-life issues. DDSD affirms life and regards dying as a normal process that should neither be hastened nor prolonged. DDSD encourages individuals to fully exercise their rights and make decisions about end-of-life issues that allow them to live with dignity and comfort.

(b) **Applicability.** Rules in this Section apply to DDSD staff and to service providers who are contracted, licensed, or funded through a DDSD Home and Community-Based Waiver or DDSD state funds and serve a person(s) who has been certified by a physician to be terminally ill. A person is considered terminally ill if he or she has a medical prognosis of life expectancy of six months or less if the illness runs its natural course.

(c) **End-of-life services.** When a person is diagnosed by a physician with terminal illness or is referred for hospice services, the case manager holds a personal support team meeting within five working days to review all care options with the person, guardian, or next of kin including consideration of hospice services.

(d) **Case manager responsibilities.** If the person, guardian, or next of kin elects hospice care, the case manager:

(1) identifies resources, including available funding, prior to selection of a hospice provider;

(2) notifies the DDSD state office Medical Services Unit that hospice services have been elected;

(3) arranges to meet with the service recipient, guardian or next of kin, DDSD nurse, health care coordinator, residential agency representative(s), other personal support team members as needed, and the hospice team to develop a treatment plan;

(4) integrates the hospice treatment plan into the Individual Plan (IP) and amends the plan of care to terminate services no longer needed and add any needed services;

(5) assists to coordinate the implementation of the treatment plan between the hospice team and the personal support team; and

(6) ensures that DDSD does not duplicate services provided by hospice but supplements hospice services to the extent needed in each situation.

(e) **DDSD nurse responsibilities.** If the service recipient, guardian, or next of kin elects hospice care, the DDSD nurse is responsible to:

(1) assist, in conjunction with the case manager, the service recipient, guardian, or next of kin with the selection of a hospice agency;

(2) develop a nursing support plan to identify hospice needs; and

(3) coordinate medication issues between the hospice provider and the residential provider to ensure compliance with OAC 340:100-5-32 regarding administration, documentation, and disposal of medications.

*[OAR Docket #03-726; filed 4-22-03]  
(format accepted 4-25-03)*



# Permanent Final Adoptions

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

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

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

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

## **TITLE 75. ATTORNEY GENERAL** **CHAPTER 10. TELEMARKETER** **RESTRICTION ACT CONSUMER** **REGISTRY**

*[OAR Docket #03-666]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 1. Establishment, Use, and Enforcement of Telemarketer Restriction Act Consumer Registry [NEW]

Part 1. Establishment and Maintenance of the Telemarketer Restriction Act Consumer Registry [NEW]

75:10-1-1 through 75:10-1-8 [NEW]

Part 2. Access and Use of the Telemarketer Restriction Act Consumer Registry [NEW]

75:10-1-9 through 75:10-1-10 [NEW]

Part 3. Fines and Reporting of Violations [NEW]

75:10-1-11 [NEW]

### **AUTHORITY:**

Attorney General; 15 O.S. Sections 775 B.1. et seq.

### **DATES:**

#### **Comment Period:**

January 2, 2003 through February 3, 2003

#### **Public Hearing:**

No public hearings were requested during the comment period.

#### **Adoption:**

February 4, 2003

#### **Submitted to Governor:**

February 13, 2003

#### **Submitted to House:**

February 13, 2003

#### **Submitted to Senate:**

February 13, 2003

#### **Gubernatorial approval:**

March 17, 2003

#### **Legislative Approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 9, 2003.

#### **Final adoption:**

April 9, 2003

#### **Effective:**

June 1, 2003

### **SUPERSEDED EMERGENCY ACTIONS:**

#### **Superseded Rules:**

Subchapter 1. Establishment, Use, and Enforcement of Telemarketer Restriction Act Consumer Registry [NEW]

Part 1. Establishment and Maintenance of the Telemarketer Restriction Act Consumer Registry [NEW]

75:10-1-1 through 75:10-1-8 [NEW]

Part 2. Access and Use of the Telemarketer Restriction Act Consumer Registry [NEW]

75:10-1-9 through 75:10-1-10 [NEW]

#### **Gubernatorial Approval:**

August 22, 2002

#### **Register Publication:**

19 Ok Reg 3071

#### **Docket number:**

02-1354

#### **SUPERSEDED EMERGENCY ACTIONS:**

#### **Superseded Rules:**

Subchapter 1. Establishment, Use, and Enforcement of Telemarketer Restriction Act Consumer Registry [NEW]

Part 3. Fines and Reporting of Violations

75:10-1-11 [NEW]

#### **Gubernatorial Approval:**

August 22, 2002

#### **Register Publication:**

19 Ok Reg 3073

#### **Docket number:**

02-1355

#### **INCORPORATIONS BY REFERENCE:**

n/a

#### **ANALYSIS:**

The Telemarketer Restriction Act requires the Attorney General to establish and maintain a statewide registry of consumers who do not want to receive unsolicited telemarketing calls. These rules further define and explain the component parts of the program which are necessary to effectively implement and enforce the Telemarketer Restriction Act Consumer Registry. Areas of the program set forth in the rules are: registration of consumers; the procedure and fees for telemarketers to access the registry; improper uses of the registry; a schedule of fines for violations; and the procedure for fielding and resolving consumer complaints.

#### **CONTACT PERSON:**

Tom Bates, Assistant Attorney General, 4545 North Lincoln Blvd., Suite 260, Oklahoma City, Oklahoma, 73105. (405) 522-1013

**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 JUNE 1, 2003:**

### **SUBCHAPTER 1. ESTABLISHMENT, USE, AND ENFORCEMENT OF TELEMARKETER RESTRICTION ACT CONSUMER REGISTRY**

### **PART 1. ESTABLISHMENT AND MAINTENANCE OF THE TELEMARKETER RESTRICTION ACT CONSUMER REGISTRY**

#### **75:10-1-1. Consumer request to be included in the registry**

**(a) A consumer living or residing in Oklahoma, or a care giver for a consumer living or residing in Oklahoma, may request to be included in the no-telemarketing-sales-call registry, hereafter "registry", by any of the following means:**

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(1) Completing a written form prepared by the Attorney General for the purpose of recording a consumer's request to be included in the registry. Consumers must submit completed forms to the Attorney General at the address listed on the form.

(2) Calling a toll-free number established by the Attorney General for the purpose of recording a consumer's request to be included in the registry.

(3) Accessing an internet site established by the Attorney General for the purpose of recording a consumer's request to be included in the registry.

(b) Consumers requesting to be included in the registry must provide the following information when the request is made: name; address; county of residence; phone numbers to be included in the registry; and, e-mail address, if available.

## **75:10-1-2. Maintenance of registry in electronic form**

The Attorney General will maintain the registry in electronic form through a computer database. The database shall consist of information submitted by consumers who have requested to be included in the registry.

## **75:10-1-3. Deadlines to be included in the registry**

Upon receipt of a properly submitted and verified request to be included in the registry by the Attorney General, consumers' names and telephone numbers included in the registry shall be circulated to telemarketers in the quarter following the deadline for receipt of requests according to the following schedule:

- (1) January-March: December 1
- (2) April-June: March 1
- (3) July-September: June 1
- (4) October-December: September 1

## **75:10-1-4. No fee to consumers**

Consumers will not be charged a fee to be included in the registry.

## **75:10-1-5. Verification of a consumer's request to be included in the registry**

The Attorney General will verify a consumer's request to be included in the registry by one of the following methods:

(1) **Written requests.** Consumers must sign and date the written form prepared by the Attorney General for the purpose of recording a consumer's request to be included in the registry. A consumer's signature will serve to verify a written request.

(2) **Telephonic requests.** After submission of a telephonic request, a consumer must confirm the request and the information provided by responding to a series of voice prompts through the telephone keypad. A consumer's affirmative responses to the voice prompts will serve to verify a telephonic request.

(3) **Online requests.** Online requests to be included in the registry will be verified by electronic mail from the Attorney General to the consumer. The electronic mail message shall contain a request to contact the Attorney General by electronic mail, in writing, or by toll-free number if the consumer did not intend to be included in the registry.

## **75:10-1-6. Effective duration of a consumer's request**

A request to be included in the registry shall remain in effect for two years from the date the consumer is first included in the registry. The request shall be automatically renewed at the end of two years unless the consumer provides written notice to the Attorney General that the consumer no longer wants to be included in the registry.

## **75:10-1-7. Change of telephone number**

If a consumer's telephone number changes after the consumer's initial request to be included in the registry, the consumer must submit a new request to be included in the registry. The new request must be submitted pursuant to these rules, and is subject to the deadlines herein.

## **75:10-1-8. Removal from the registry**

(a) A consumer may request to be removed from the registry by one of the following methods:

(1) **Written notice.** A consumer may request to be removed from the registry by submitting a written notice to the Attorney General. The written notice must be submitted on a form prepared by the Attorney General and returned to the address listed on the form. For verification, the form must be signed and dated by the consumer.

(2) **Telephonic notice.** A consumer may request to be removed from the registry by calling a toll-free telephone number established by the Attorney General. A consumer must confirm the request by responding to a series of voice prompts through the telephone keypad. A consumer's affirmative responses to the voice prompts will serve to verify a telephonic request to be removed from the registry.

(b) Upon receipt of a written or telephonic request to be removed from the registry, the Attorney General will remove the consumer from the registry according to the same schedule for including consumers in the registry.

## **PART 2. ACCESS AND USE OF THE TELEMARKETER RESTRICTION ACT CONSUMER REGISTRY**

### **75:10-1-9. Fees and procedure for telemarketers to access the registry**

Any telemarketer, as defined in 15 O.S. Supp. 2002, § 775B.2(5), desiring to make unsolicited telemarketing sales calls to consumers in Oklahoma may obtain access to the registry, subject to the limitations, requirements and fees set forth below:

(1) A telemarketer's access to the registry shall be limited to the names, telephone numbers, and dates of registration, of consumers included in the registry.

(2) A telemarketer must execute a written confidentiality agreement prepared by the Attorney General that restricts use of the registry to the sole purpose of complying with 15 O.S. Supp. 2002, §775B.6 as amended from time-to-time; prohibits transfer to a third party of the telemarketer's access to the registry; and prohibits transfer to a third party of any information compiled by the telemarketer through access to the registry.

(3) Fees for accessing the registry shall be \$600.00 per year or \$150.00 per quarter year. Such fees must be submitted to the Attorney General before a telemarketer is given access to the registry.

(4) A telemarketer must submit a fully completed Request for Registry Access Form to the Attorney General. Such forms will be prepared by the Attorney General and must be returned to the address printed on the form. The following information must be provided on the form:

(A) Name, address, and phone number of telemarketer;

(B) Name, address, and phone number of all affiliates and subsidiaries;

(C) Name, address, and phone number of all trade, assumed, or fictitious names used by the telemarketer;

(D) Name, address, and phone number of the person to be contacted by the Attorney General with any questions concerning the request or complaints;

(E) Name and address of service agent;

(F) Description of telemarketer's commercial purpose, including goods and services offered for sale by the telemarketer;

(G) Certification that the telemarketer will fully comply with the Telemarketer Restriction Act, 15 O.S. Supp. 2002 § 775 B.1 et seq. and the rules promulgated thereunder.

(H) Certification that the telemarketer has fully complied with all other applicable laws, including but not limited to, 15 O.S. Supp. 2002 § 775A.3, or if claiming an exemption under other applicable laws, a notarized affidavit explaining why the telemarketer is exempt. The Attorney General may investigate all claims for exemption pursuant to the Consumer Protection Act.

**75:10-1-10. Improper uses of the registry**

No telemarketer who obtains access to the registry may use the information for purposes other than compliance with the Telemarketer Restriction Act.

**PART 3. REPORTING OF VIOLATIONS AND ENFORCEMENT**

**75:10-1-11. Reporting violations and assessment of fines**

(a) Any consumer may report a violation of the Telemarketer Restriction Act by submitting a fully completed complaint form to the Attorney General. Such complaints may be submitted online or in writing on a form prepared by the Attorney General. Written complaint forms must be returned to the address printed on the form.

(b) Consumers will be asked for the following information on the complaint form:

(1) Full name of complaining consumer;

(2) Address of complaining consumer;

(3) Telephone number telemarketer called;

(4) Name and/or telephone number of the telemarketer;

(5) Any information gathered by the consumer during the call concerning the telemarketer or the telemarketer's commercial purpose;

(6) A statement giving consent to the consumer's local exchange carrier to produce all records relating to the call to the Attorney General; and

(7) Any other information the Attorney General deems necessary to fully investigate the complaint.

(c) Upon receipt of a fully completed and properly submitted complaint, the Attorney General shall conduct an appropriate inquiry to determine if a violation has occurred. If the Attorney General determines that a violation has occurred, the Attorney General may, at his discretion, proceed with an enforcement action in district court, or assess an administrative fine.

(d) The schedule of administrative fines is as follows:

(1) 1<sup>st</sup> and 2<sup>nd</sup> violations: not to exceed \$1,000.00 per violation;

(2) 3<sup>rd</sup> and 4<sup>th</sup> violations: not to exceed \$2,000.00 per violation;

(3) 5<sup>th</sup> and 6<sup>th</sup> violations: not to exceed \$4,000.00 per violation;

(4) 7<sup>th</sup> and 8<sup>th</sup> violations: not to exceed \$6,000.00 per violation;

(5) 9<sup>th</sup> and 10<sup>th</sup> violations: not to exceed \$8,000.00 per violation; (6) All subsequent violations: not to exceed \$10,000.00 per violation.

(e) Any telemarketer who refuses to pay an assessed fine may be assessed additional costs and reasonable attorney fees related to the collection of the fine.

[OAR Docket #03-666; filed 4-17-03]

**TITLE 85. STATE BANKING DEPARTMENT  
CHAPTER 10. SUPERVISION,  
REGULATION AND ADMINISTRATION OF  
BANKS AND THE OKLAHOMA BANKING  
CODE**

[OAR Docket #03-737]

**RULEMAKING ACTION:**  
PERMANENT final adoption

# Permanent Final Adoptions

## **RULES:**

Subchapter 5. Requirements, Standards and Procedures for an Internal Control Program

85:10-5-3. Minimum control elements for bank internal control program [AMENDED]

85:10-5-3.1 Internal control program for fiduciary activities of trust departments and trust companies [NEW]

## **AUTHORITY:**

State Banking Board; 6 O.S. § 203(3)

## **DATES:**

### **Comment period:**

January 16, 2003 through February 18, 2003

### **Public hearing:**

February 19, 2003

### **Adoption:**

February 19, 2003

### **Submitted to Governor:**

February 25, 2003

### **Submitted to House:**

February 25, 2003

### **Submitted to Senate:**

February 25, 2003

### **Gubernatorial approval:**

April 10, 2003

### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on

April 22, 2003

### **Final Adoption:**

April 22, 2003

### **Effective:**

May 27, 2003

### **SUPERSEDED EMERGENCY ACTION:**

N/A

### **INCORPORATIONS BY REFERENCE:**

N/A

### **ANALYSIS:**

The amendment to rule 85:10-5-3 will limit its application to only banks. This amendment is made in conjunction with new rule (85:10-5-3.1) that will apply only to trust departments and trust companies. The intended effect of the rule is to clarify its application to only banks.

New rule 85:10-5-3.1 will establish minimum control elements for trust departments and trust companies. The new rule is needed because the minimum internal control elements applicable to banks do not address some of the unique aspects of a trust department or trust company. The intended effect of the rule is to create a more safe and sound trust department or trust company.

### **CONTACT PERSON:**

O. Dudley Gilbert, Legal Counsel, State Banking Department, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, Oklahoma 73105, (405) 521-2782.

**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 MAY 27, 2003:**

## **SUBCHAPTER 5. REQUIREMENTS, STANDARDS AND PROCEDURES FOR AN INTERNAL CONTROL PROGRAM**

### **85:10-5-3. Minimum control elements for bank internal control program**

All internal control programs adopted by banks shall contain as a minimum the following:

(1) A requirement that each officer and employee, when eligible for vacation be absent from the institution at least five consecutive banking days each calendar year,

unless otherwise approved in writing by the bank's bonding company for bank officers and employees generally and then each officer and employee who may be excepted from this requirement must be specifically approved by the bank's Board of Directors and recorded in the Board of Director's minutes, that the officer or the employee may be absent less than the five consecutive banking days.

(2) A requirement that periodic reports be made to the Board of Directors, said report to contain at least the minimum as set out in 85:10-5-4.

(3) Require the Control Officer or Auditor to periodically, no less often than stated herein, perform or supervise performance of:

(A) Daily - Review EDP master file changes.

(B) As frequently as necessary but at least quarterly on a surprise basis, count tellers' cash (which includes vault cash), review bait money, and insure that established procedures are being followed.

(C) Monthly - On a surprise basis, prove to the general ledger and verify validity of all cash items and cash collections, and report to the Board of Directors those cash items and cash collections which are in excess of the minimum amount established by the Board. Also, all stale dated (cash items held over 30 days) cash items that are not being currently worked for collection, should be charged off. The collection effort of these items should be documented in writing.

(D) Monthly - On a surprise basis, balance overdrafts to general ledger, scrutinize for large recurring overdrafts and report to the Board of Directors those overdrafts which are in excess of the minimum amount established by the Board.

(E) Monthly - Reconcile and prove to the general ledger:

(i) All deposit accounts (including demand, savings, time certificates and cashier's checks).

(ii) Official checks.

(iii) All loans.

(F) Monthly - Reconcile all correspondent bank accounts. Verify any item outstanding over fifteen (15) days.

(G) Monthly - Review tellers over/short.

(H) Quarterly - Reconcile all unissued consignment items.

(I) Quarterly - Reconcile Treasury Tax and Loan Account.

(J) Quarterly - Review all senior officers' accounts in the institution and report any unexplained items to the Board of Directors. All other employees' accounts must be reviewed no less often than semi-annually.

(K) Monthly - Reconcile and prove to the general ledger all investment accounts.

(L) Monthly - Verify the unrealized gains or losses on securities account and associated tax account.

(M) Quarterly - Prove to the general ledger those accounts which have been determined by institution policy to be "dormant". Review the operations for compliance to institution policy. Each time activity

occurs in a dormant account that activity should be reviewed to establish the authenticity of the entry.

(N) Quarterly - Balance and verify all "other asset" accounts and "other liability" accounts which have had activity since last verification.

(O) Monthly - Balance to general ledger and verify all accruals (loans, investments, time deposits, etc.)

(4) Establish the maximum cash exposure the institution will have. This should include not only the total but the maximum amounts to be in each teller's unit.

(5) Establish a procedure for security of vault cash and for collateral held by the bank or trust company.

(6) Establish a procedure for dual control for the reserve stocks of all official checks, consigned items, and the reserve stocks of other items in the bank.

(7) All requirements of this Section, Minimum Control Elements, that are met, should be documented, in writing, so that evidence exists that will substantiate to an examiner that this Section's requirements are being met.

**SUBCHAPTER 5. REQUIREMENTS, STANDARDS AND PROCEDURES FOR AN INTERNAL CONTROL PROGRAM**

**85:10-5-3.1. Internal control program for fiduciary activities of trust departments and trust companies**

(a) Each trust department and trust company should establish an appropriate system of notification to prompt and aid in the administration of fiduciary accounts.

(b) Where applicable, the following items, at a minimum, shall be performed by all trust departments and all trust companies conducting fiduciary activities to assure the maintenance of sufficient internal audits, reviews and appointments, and reports. Documentation must be maintained to show that each item was completed as required.

(1) A daily review of master file changes.

(2) A monthly review of overdrafts that exceed a reasonable minimum established by the institution.

(3) A monthly review of uninvested cash balances that exceed a reasonable minimum established by the institution.

(4) A monthly review of past due loans held in trust accounts to assure proper collection efforts.

(5) A monthly verification to assure that all opened and closed accounts received appropriate review within 60 days of opening or closing.

(6) A monthly reconciliation of trust department or trust company deposit accounts.

(7) A semi-annual verification of dual control procedures for all trust assets held on premises.

(8) Annually assure that a notification or prompt system has been established for the following items, at a minimum:

(A) Annual reviews of all fiduciary accounts.

(B) Premiums due for property insurance.

(C) Payment of real estate taxes.

(D) Performance of annual real estate inspections.

(E) Performance of tri-annual real estate appraisals

(c) All trust departments and all trust companies conducting fiduciary activities shall on an annual basis perform the following reviews and make the following appointments. Documentation must be maintained to show that each item was completed as required.

(1) A review of trust department policies, including account investment criteria.

(2) An annual appointment of individuals or committees with authority to approve discretionary account distributions over a reasonable minimum established by the institution.

(3) An annual appointment of individuals with authority to sign trust department checks, including dual signature requirements.

(d) All trust departments and all trust companies conducting fiduciary activities shall on a quarterly basis prepare the following written reports.

(1) A report of all existing and threatened litigation.

(2) A report of trust department profitability.

(3) A report of all exceptions involving the aforementioned requirements.

[OAR Docket #03-737; filed 4-23-03]

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

[OAR Docket #03-675]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Election Personnel

Part 1. The County Election Board

230:10-3-8. Salary of the Secretary [AMENDED]

Subchapter 7. General Administration of the County Election Board

Part 7. Public Records

230:10-7-59. Public records [AMENDED]

Part 9. Finances

230:10-7-76. Special Depository Account [AMENDED]

230:10-7-82. Expenses paid through Special Depository Account [AMENDED]

**AUTHORITY:**

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

**DATES:**

**Comment period:**

January 2, 2003, through February 3, 2003

**Public hearing:**

February 3, 2003

**Adoption:**

February 19, 2003

**Submitted to Governor:**

February 19, 2003

**Submitted to House:**

February 19, 2003

**Submitted to Senate:**

February 19, 2003

**Gubernatorial approval:**

March 24, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2003

# Permanent Final Adoptions

## Final adoption:

April 15, 2003

## Effective:

July 1, 2003

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 3. Election Personnel

Part 1. The County Election Board

230:10-3-8. Salary of the Secretary [AMENDED]

Subchapter 7. General Administration of the County Election Board

Part 7. Public Records

230:10-7-59. Public records [AMENDED]

Part 9. Finances

230:10-7-76. Special Depository Account [AMENDED]

230:10-7-82. Expenses paid through Special Depository Account [AMENDED]

## Gubernatorial approval:

January 2, 2003

## Register Publication:

20 Ok Reg 468

## Docket number:

#03-70

## INCORPORATION BY REFERENCE:

n/a

## ANALYSIS:

The amendments in Subchapter 3 concern the salary of the County Election Board Secretary and the timing of salary increases for the Secretary. The amendments are necessary because of a 2002 amendment to Title 26, Section 2-118 included in SB1350.

The amendments in Subchapter 7 are the result of new law codified as Title 26, Section 4-115.2 and as Title 22, Section 60.13. Voter registration address information for certain classes of registered voters may, at the voter's request, be kept confidential. Other proposed amendments in Subchapter 7 are the result of an amendment to Title 26, Sections 5-112 and 5-113. As a result of the change in the law, candidate filing fees now are deposited in the County Election Board Special Depository Account immediately upon receipt. When a candidate becomes eligible for the return of his or her filing fee, the fee is refunded by a voucher from the Special Depository Account. Several Sections are amended to reflect this change.

## CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

## SUBCHAPTER 3. ELECTION PERSONNEL

### PART 1. THE COUNTY ELECTION BOARD

#### 230:10-3-8. Salary of the Secretary

(a) The Secretary is paid on a monthly basis from county funds. Each month the State Election Board shall reimburse the county for the salary and fringe benefits paid to the Secretary, not to exceed 135 percent of the salaries specified. [26:2-118] ~~The Secretary's salary is based on the number of registered voters in the county. The number of registered voters is determined by the number of registered voters, excluding inactive voters, in the county on January 1 of each odd-numbered year. [26:2-118] The salary schedule is effective for the fiscal year beginning on the following July~~

~~1. The Secretary shall file a report with the County Clerk in January each year stating the total number of registered voters in the county. See 230:10-7-50. The registration information contained in this report is used to determine the Secretary's salary for the following fiscal year. The Secretary's salary is set by law and is based on the number of active registered voters in the county on January 1 of each odd-numbered year. [26:2-118]~~

~~(b) The Secretary of the State Election Board shall determine the appropriate salary level for each County Election Board Secretary, and shall notify the County Clerk in each county in January of each odd-numbered year. Any salary change shall take effect at the beginning of the County Election Board Secretary's term on May 1 of each odd-numbered year and shall remain in effect throughout the two-year term.~~

~~(c) In the event that a County Election Board is under administrative supervision of the State Election Board, as outlined in 230:10-3-9.1, at the time a salary increase becomes effective, the Secretary of that County Election Board shall not receive the salary increase. [26:2-118] The Secretary shall be entitled to receive the salary increase at the time that the administrative supervision ends. The salary increase shall not be retroactive to the time the salary increase generally became effective.~~

~~(d) The salary of the a County Election Board Secretary shall not fall below the level of the salary paid in the county on ~~June 30, 1997~~ May 1, 2002, regardless of the number of active registered voters in the county. [26:2-118] The salary of a County Election Board Secretary who is reappointed to a new two-year term as Secretary shall not fall below the salary received in the immediately preceding term. [26:2-118]~~

## SUBCHAPTER 7. GENERAL ADMINISTRATION OF THE COUNTY ELECTION BOARD

### PART 7. PUBLIC RECORDS

#### 230:10-7-59. Public records

(a) All records of the County Election Board, except as provided in (b), (c) and (d) of this Section, must be made available for public inspection, copying and/or mechanical reproduction during regular office hours. [51:24A.5] The County Election Board must provide prompt, reasonable access to its records but may establish reasonable procedures to protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

(b) *No information relating to a declination to register to vote in connection with an application made at an office designated a voter registration agency may be used for any purpose other than voter registration. [26:4-109.2(C)] The identity of a voter registration agency through which a particular voter registered may not be disclosed to the public. [26:4-109.2(D)]* If a person applies for voter registration in connection with the application for, renewal of or change of address for an Oklahoma driver's license or state identification card, *the office at which the person submits the voter registration application or*

*the fact that the person declined to register shall remain confidential and will be used only for voter registration purposes.* [26:4-109.3(A)]

(c) Members of the judiciary, district attorneys, assistant district attorneys, law enforcement personnel, corrections officers, and persons covered by victim's protection orders are entitled by law to apply to the Secretary of the County Election Board for restricted records status. [26:4-115.2] The spouse and/or dependent of a voter entitled to apply for restricted records status also may apply for restricted records status. Restricted records status shall apply to the voter registration form in the Central File, to registration information in OEMS, and to materials used to request and cast absentee ballots. Voter registration information for restricted records voters shall be available only to authorized County Election Board personnel for administrative purposes, with the exception that it may be provided to a candidate or a candidate's representative or other lawful authority in connection with a contest of candidacy, a contest of election, or a petition challenge as provided by law. [26:4-115.2] Restricted records status shall remain in effect until the voter chooses to end it by notifying the Secretary in writing. See 230:15-9-25.

(d) The name, address, and precinct number of an Address Confidentiality Program (ACP) participant who applies to the Secretary of the State Election Board for ACP voter registration and absentee ballots shall not be released to any person for any purpose except by court order. No information concerning an ACP voter shall be entered in OEMS. The name, address and precinct number of an ACP voter shall not appear on any list or report produced by either the State Election Board or the County Election Board.

**PART 9. FINANCES**

**230:10-7-76. Special Depository Account**

The County Election Board must use a County Election Board Special Depository Account for receipt and disbursement of monies received by the Board. [26:3-108] The Special Depository Account is operated through the County Treasurer's office. It is used to receive funds such as ~~forfeited~~-filing fees, deposits for contests of candidacy, deposits for contests of election, funds for compensation of Precinct Officials, payments for school elections and payments for municipal elections. Deposits shall be made daily as funds are received, and disbursements shall be made as soon as legally possible. Any balance continuing in the Special Depository Account ~~from month to month~~ after all appropriate disbursements have been made shall be from forfeited filing fees only. The County Election Board Secretary shall be authorized to make expenditures from the amount of forfeited filing fees in the Special Depository Account for any lawful purpose. [26:3-108]

**230:10-7-82. Expenses paid through Special Depository Account**

For statewide elections, the state's and the county's share of compensation for Precinct Officials and the Absentee Voting Boards are paid through the Special Depository Account.

Refunds of candidate filing fees also are paid from the Special Depository Account. (See 230:20-3-39.1 and 230:20-3-63) All other expenses are handled by submitting purchase orders to the County Clerk. The purchase orders are paid by the County Clerk with warrants drawn on the County Election Board's budget account. For special county elections, only compensation for Precinct Officials is paid through the Special Depository Account. All other expenses for special county elections are paid by submitting purchase orders to the County Clerk. For school district and municipal elections, all warrants received from the entities are deposited in the Special Depository Account and vouchers are written to pay all expenses incurred in the election.

[OAR Docket #03-675; filed 4-21-03]

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

[OAR Docket #03-676]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Voter Outreach
- Part 3. Distribution of Voter Registration Application Forms
- 230:15-3-24. Voter registration application forms available in quantity for organized voter registration programs [AMENDED]
- 230:15-3-26. Requests for more than ~~4,000~~ 5,000 Oklahoma Voter Registration Application forms [AMENDED]
- Subchapter 5. Application for Voter Registration
- Part 17. Public Records
- 230:15-5-73. All registration records public [AMENDED]
- Part 21. Voter Registration Application by Mail
- 230:15-5-83.1. Voter registration for Address Confidentiality Program participants [NEW]
- 230:15-5-84. Information required on voter registration application [AMENDED]
- Subchapter 9. ~~State Election Board and County Election Board Responsibilities for Receiving and Processing~~ Voter Registration Applications
- Part 1. Responsibilities of the State Election Board for Voter Registration
- 230:15-9-3.1. Processing voter registration and absentee ballot requests from Address Confidentiality Program participants at the State Election Board [NEW]
- Part 5. Processing Voter Registration Applications
- 230:15-9-18.1. Assigning voter registration addresses in the Street Guide [AMENDED]
- 230:15-9-25. Processing applications for restricted records status [NEW]
- Subchapter 11. Voter Registration List Maintenance
- Part 1. Cancellation of Voter Registration
- 230:15-11-6. Cancellation of registration of deceased voter by next of kin [AMENDED]

**AUTHORITY:**

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

**DATES:**

**Comment period:**

January 2, 2003, through February 3, 2003

**Public hearing:**

February 3, 2003

**Adoption:**

February 19, 2003

**Submitted to Governor:**

February 19, 2003

**Submitted to House:**

February 19, 2003

**Submitted to Senate:**

February 19, 2003

# Permanent Final Adoptions

## Gubernatorial approval:

March 24, 2003

## Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2003

## Final adoption:

April 15, 2003

## Effective:

July 1, 2003

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 3. Voter Outreach

Part 3. Distribution of Voter Registration Application Forms

230:15-3-26. Requests for more than ~~4,000~~ 5,000 Oklahoma Voter Registration Application forms [AMENDED]

Subchapter 5. Application for Voter Registration

Part 17. Public Records

230:15-5-73. All registration records public [AMENDED]

Part 21. Voter Registration Application by Mail

230:15-5-84. Information required on voter registration application [AMENDED]

Subchapter 9. ~~State Election Board and County Election Board Responsibilities for Receiving and Processing~~ Voter Registration Applications

Part 5. Processing Voter Registration Applications

230:15-9-18.1. Assigning voter registration addresses in the Street Guide [AMENDED]

230:15-9-25. Processing applications for restricted records status [NEW]

Subchapter 11. Voter Registration List Maintenance

Part 1. Cancellation of Voter Registration

230:15-11-6. Cancellation of registration of deceased voter by next of kin [AMENDED]

February 19, 2003

## Gubernatorial approval:

January 2, 2003

## Register Publication:

20 Ok Reg 470

## Docket number:

#03-71

## INCORPORATION BY REFERENCE:

n/a

## ANALYSIS:

The amendments in Subchapter 3 increase the quantities of Oklahoma Voter Registration Application forms that may be distributed to individuals or organizations by State and/or County Election Board personnel. Most of the other amendments in this Chapter are the result of a new law and amendments included in SB1350 and new law included in HB2921. Specifically, new law allows certain classes of registered voters to request that their residence and mailing address information be kept confidential. An amendment in Subchapter 5 and new Sections in Subchapter 9 establish procedures for these voters to ask for restricted records status and for the State and/or County Election Board Secretary to receive and process such requests. Other amendments in Subchapter 5 are the result of amendments in 26:4-112 that define the elements of valid residence and mailing addresses. Finally, an amendment in Subchapter 9 is the result of a change in 26:4-120.3 that allows the next of kin of a deceased registered voter to fill out a form at his or her own polling place (as opposed to only at the deceased voter's polling place) to cancel the deceased voter's registration.

## CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

### SUBCHAPTER 3. VOTER OUTREACH

## PART 3. DISTRIBUTION OF VOTER REGISTRATION APPLICATION FORMS

### 230:15-3-24. Voter registration application forms available in quantity for organized voter registration programs

(a) The Oklahoma Voter Registration Application form shall be made available in quantity to any organization, entity or individual for use in organized voter registration programs. Quantities of the form may be obtained from any County Election Board as outlined in (b) of this Section or from the State Election Board as outlined in (c) of this Section.

(b) Any organization, entity or individual may obtain quantities of the Oklahoma Voter Registration Application form from the Secretary of any County Election Board as outlined in this subsection. However, the Secretary may refuse a request for forms if, in the Secretary's judgment, filling it would reduce the County Election Board's supply of forms below the level needed to meet its own requirements. Serial requests from the same organization, entity or individual made within a thirty-day period shall be made in writing and shall state that all previously received forms have been distributed.

(1) A maximum of ~~400~~ 250 Oklahoma Voter Registration Application forms may be obtained from the County Election Board in a county having up to 10,000 registered voters.

(2) A maximum of ~~250~~ 1,000 Oklahoma Voter Registration Application forms may be obtained from the County Election Board in a county having 10,001 or more registered voters but fewer than 50,000 registered voters.

(3) A maximum of ~~500~~ 2,000 Oklahoma Voter Registration Application forms may be obtained from the County Election Board in a county having 50,001 or more registered voters.

(c) Any organization, entity or individual may obtain ~~quantities up to 5,000 copies~~ of the Oklahoma Voter Registration Application form from the Secretary of the State Election Board ~~as outlined in this subsection by making a written request~~. Serial requests from the same organization, entity or individual made within a thirty-day period shall be made in writing and shall state that all previously received forms have been distributed.

~~(1) A maximum of 100 Oklahoma Voter Registration Application forms may be obtained from the State Election Board office without providing any identification.~~

~~(2) Between 101 and 1,000 copies of the Oklahoma Voter Registration Application form may be obtained from the State Election Board by providing the following information: name, name of organization or entity, number of forms obtained, date, and signature.~~

(d) The State Election Board shall provide a list of vendors from whom the federal voter registration application form may be purchased in quantity. The State Election Board shall not provide the federal voter registration application form in quantity to any organization, entity or individual for use in an organized voter registration program.

**230:15-3-26. Requests for more than ~~1,000~~ 5,000 Oklahoma Voter Registration Application forms**

- (a) Any organization, entity or individual anticipating the need for more than ~~1,000~~ 5,000 Oklahoma Voter Registration Application forms shall request permission from the Secretary of the State Election Board to print the forms. Such requests shall be made in writing and shall include the following information: name, address and telephone number of the organization, entity or individual requesting permission to print the Oklahoma Voter Registration Application form; the quantity of forms to be printed; a brief description of plans for use or distribution of the forms; date of request; signature.
- (b) When a request for permission to print the Oklahoma Voter Registration Application form is approved by the Secretary of the State Election Board, the State Election Board staff shall provide the printing specifications and camera-ready copy for the Oklahoma Voter Registration Application form to the organization, entity or individual who made the request. The organization, entity or individual shall be required to produce the Oklahoma Voter Registration Application form exactly according to the specification provided.
- (c) The Secretary of the State Election Board may revoke permission to print the Oklahoma Voter Registration Application form from any organization, entity or individual at any time.

**SUBCHAPTER 5. APPLICATION FOR VOTER REGISTRATION**

**PART 17. PUBLIC RECORDS**

**230:15-5-73. All registration records public**

- (a) All registration records, except as provided in (b), (c) and (d) of this Section, must be available for public inspection and copying or mechanical reproduction during regular office hours. The Secretary shall cooperate with any individual or group wishing to inspect and copy the registration records, and a uniform policy shall be established so that such inspection and copying will not interfere with normal operations of the office. See 230:10-7-59 through 230:10-7-65.
- (b) *No information relating to a declination to register to vote in connection with an application made at an office designated a voter registration agency may be used for any purpose other than voter registration. [26:4-109.2(C)] The identity of a voter registration agency through which a particular voter registered may not be disclosed to the public. [26:4-109.2(D)]* If a person applies for voter registration in connection with the application for, renewal of or change of address for an Oklahoma driver's license or state identification card, *the office at which the person submits the voter registration application or the fact that the person declined to register shall remain confidential and will be used only for voter registration purposes. [26:4-109.3(A)]*
- (c) Members of the judiciary, district attorneys, assistant district attorneys, law enforcement personnel, corrections

- officers, and persons covered by victim's protection orders are entitled by law to apply to the Secretary of the County Election Board for restricted records status. [26:4-115.2] The spouse and/or dependent of a voter entitled to apply for restricted records status also may apply for restricted records status. Restricted records status shall apply to the voter registration form in the Central File, to registration information in OEMS, and to materials used to request and cast absentee ballots. Voter registration information for restricted records voters shall be available only to authorized County Election Board personnel for administrative purposes, with the exception that it may be provided to a candidate or a candidate's representative or other lawful authority in connection with a contest of candidacy, a contest of election, or a petition challenge as provided by law. [26:4-115.2] Restricted records status shall remain in effect until the voter chooses to end it by notifying the Secretary in writing. See 230:15-9-25.
- (d) The name, address, and precinct number of an Address Confidentiality Program (ACP) participant who applies to the Secretary of the State Election Board for ACP voter registration and absentee ballots shall not be released to any person for any purpose except by court order. No information concerning an ACP voter shall be entered in OEMS. The name, address and precinct number of an ACP voter shall not appear on any list or report produced by either the State Election Board or the County Election Board.

**PART 21. VOTER REGISTRATION APPLICATION BY MAIL**

**230:15-5-83.1. Voter registration for Address Confidentiality Program participants**

- (a) A person certified by the Secretary of State as a participant in the Address Confidentiality Program may request an ACP Voter Registration Packet from the State Election Board. A form to use for this request is provided by the State Election Board to the Secretary of State for distribution with other ACP materials. An ACP participant who is a registered voter when entering the program must cancel the existing voter registration and apply for new registration as an ACP voter. An ACP voter will receive absentee ballots by mail for all local, state, and national elections in which she is eligible to vote for up to four years. Upon receipt of the ACP Voter Registration Packet, the participant follows these steps to become a registered voter.
  - (1) If the ACP participant is currently registered to vote in Oklahoma, fill out the Request to Cancel Voter Registration form in the presence of a Notary Public.
  - (2) Fill out the enclosed ACP Oklahoma Voter Registration Application form.
    - (A) Enter the actual residence address in Box 6 on this form. Election officials must know the actual residence address in order to assign the voter to the correct precinct and issue the correct ballots. Only one member of the State Election Board staff will have access to this form.
    - (B) Enter the ACP address as the mailing address in Box 7.

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- (C) Be certain to sign the ACP Oklahoma Voter Registration Application form.
- (3) Read and sign the Statement of Understanding form.
- (4) Obtain a photocopy of one of the following forms of identification that shows both the participant's name and ACP address. Federal law requires persons who register to vote by mail to provide identification prior to voting for the first time.
- (A) a valid and current photo identification.
- (B) a current utility bill.
- (C) a current bank statement.
- (D) a government check
- (E) any other government document that shows both the name and the ACP address.
- (5) Use the self-addressed envelope included in the ACP Voter Registration Packet to mail the following items to the Oklahoma State Election Board.
- (A) signed and notarized Request to Cancel Voter Registration form, if applicable.
- (B) filled out and signed ACP Oklahoma Voter Registration Application form.
- (C) signed Statement of Understanding form.
- (D) copy of identification.
- (b) In order to protect the confidentiality of the ACP voter's address, the following rules must be observed.
- (1) An ACP voter may not vote in person at the polling place for the precinct in which she resides.
- (2) An ACP voter may not vote by in-person absentee ballot at the County Election Board office.
- (3) An ACP voter may not sign an initiative petition or any other petition that is verified against voter registration records.
- (4) An ACP voter must not apply for voter registration when obtaining or changing address on an Oklahoma driver's license or state identification card or when applying for certain forms of public assistance.

### **230:15-5-84. Information required on voter registration application**

- (a) A person who is eligible to register to vote and who applies for voter registration shall be required to provide the information listed in (b) of this Section on a voter registration application form. Voter registration applications that contain all the required information shall be valid applications and shall be approved by the Secretary of the County Election Board and the applicant shall become a registered voter in the county. An application that does not contain the required information, except as provided in (c) and (d) of this Section, shall not be a valid application and shall be rejected.
- (b) A valid voter registration application shall contain the following information.
- (1) Applicant's full name.
- (2) Applicant's date of birth.
- (3) Applicant's county of residence. (See exception provided in (d) of this Section.)
- (4) Applicant's residence address. (See (e) of this Section.)

- (5) Applicant's mailing address. (See (f) of this Section.)
- (6) Applicant's political affiliation. (See exception provided in (c) of this Section.)
- (7) Last four digits of applicant's social security number.
- (8) Applicant's original signature or applicant's original mark.
- (9) Name and address of person who helped applicant complete application if applicant is unable to complete it unassisted.
- (c) An application for voter registration that is valid in all other respects shall not be rejected because the applicant has made one of the errors listed below when indicating a political affiliation. County Election Board personnel shall be authorized to designate an applicant as an Independent if one of the errors listed below appears on an otherwise valid voter registration application form. A voter designated Independent by County Election Board personnel for one of the following reasons shall be entitled to declare a political affiliation at any time, even during the period beginning at 5 p.m. July 1 and ending at 5 p.m. September 30 in even-numbered years when changes of political affiliation are prohibited. Such declarations of political affiliation shall be subject to the voter registration application deadlines preceding an election. See 230:15-5-86.
- (1) The applicant left the space on the application form for political affiliation blank.
- (2) The applicant indicated more than one political affiliation and the applicant's intention cannot be determined.
- (3) The applicant wrote the name of a political party or political organization not currently recognized in Oklahoma. See 230:15-5-77 and 230:15-5-79.
- (d) An applicant for voter registration shall indicate the name of the county in which he or she resides on the application form. However, if an applicant fails to indicate his or her county of residence, the Secretary of the County Election Board shall not reject the application solely for this purpose if the residence address provided by the applicant is in fact located within the county.
- (e) An applicant for voter registration must provide his or her address of residence. If the applicant has a street address (a street name and number, an apartment or suite number, if applicable, and zip code), that is the applicant's address of residence. [26:4-112] If the applicant does not have a street address, ~~he or she must provide~~ a physical description of the location of the residence that can be used to pinpoint the ~~applicant's~~ residence on a map must be provided. The applicant may provide a 911 address or may provide the legal description (a Section-Township-Range description, including the appropriate quarter section or quarter-quarter section designation). Neither a rural route address nor a post office box address is acceptable as an address of residence for voter registration purposes. A voter registration application that does not include an address of residence sufficient to locate the residence on a map shall be rejected by the Secretary of the County Election Board.

(f) A mailing address must include the city and zip code. An emergency notification address, or 911 address, a rural route and box number, a post office box, or a street address all constitute valid mailing addresses for voter registration purposes. [26:4-112]

**SUBCHAPTER 9. STATE ELECTION BOARD AND COUNTY ELECTION BOARD RESPONSIBILITIES FOR RECEIVING AND PROCESSING VOTER REGISTRATION APPLICATIONS**

**PART 1. RESPONSIBILITIES OF THE STATE ELECTION BOARD FOR VOTER REGISTRATION**

**230:15-9-3.1. Processing voter registration and absentee ballot requests from Address Confidentiality Program participants at the State Election Board**

(a) Persons who are certified participants in the Address Confidentiality Program administered by the office of the Oklahoma Secretary of State and who are registered voters must cancel their existing voter registrations and apply to the State Election Board for new registration as ACP voters. The voter registration information of ACP voters shall be maintained in the office of the State Election Board by a designated employee of the State Election Board and shall not be released to any person for any purpose except by court order. The name, address and precinct number of an ACP voter shall not be entered in OEMS and shall not appear on any report or list produced by the State or the County Election Board.

(b) ACP participants who become registered as ACP voters may vote only by mail absentee ballot. The absentee ballots shall be mailed by the appropriate County Election Board Secretary to the ACP address. An ACP participant's voter registration application shall be considered to be an application for mail absentee ballots for all elections in which the voter is eligible to vote and shall be valid for up to four years from the date it is received by the State Election Board.

(c) The Secretary of the State Election Board shall provide a form to be used by ACP participants to request an ACP Voter Registration Packet. The ACP Voter Registration Packet shall include the following items.

- (1) ACP Voter Registration Instructions
- (2) Request to Cancel Voter Registration form
- (3) ACP Oklahoma Voter Registration Application form
- (4) ACP Voter Registration Statement of Understanding
- (5) Self-addressed return envelope stamped "ACP"

(d) The Secretary of the State Election Board shall designate an employee of the State Election Board to be responsible for receiving and processing voter registration and absentee ballot requests from ACP participants. The designated employee

shall prepare and mail an ACP Voter Registration Packet in response to requests received from certified ACP participants. Upon receipt of a completed ACP Voter Registration Packet at the State Election Board office, the following procedure shall be observed.

(1) All mail received at the State Election Board office with an ACP stamp shall be separated from other agency mail and delivered unopened to the designated employee.

(2) The employee shall open the ACP envelope and remove the contents. The items in the returned packet shall be processed as follows.

(A) Send the Request to Cancel Voter Registration form to the appropriate County Election Board to be processed.

(B) Access OEMS and/or mapping software to determine the voter's correct precinct number and district information. Record precinct and districts on the ACP Voter Registration Application form.

(C) Verify that the voter enclosed a photocopy of one of the following forms of identification that shows both the voter's name and the ACP address: a current and valid photo identification; a current utility bill, bank statement, government check, or paycheck; or any other government document that shows both the voter's name and the ACP address.

(D) Fill out an ACP Absentee Ballot Application form. Enter the voter's name, ACP address, date of birth, precinct number, school district/board district, and municipality/ward, if applicable.

(E) Mail the ACP Absentee Ballot Application form, an ACP Voter History form, and a copy of the ACP Instructions for County Election Board to the Secretary of the appropriate County Election Board.

(3) The employee shall file the ACP Voter Registration Form, the Statement of Understanding, the copy of the voter's identification as described in (2)(C), and a copy of the ACP Absentee Ballot Application. The file containing these materials shall be locked.

**PART 5. PROCESSING VOTER REGISTRATION APPLICATIONS**

**230:15-9-18.1. Assigning voter registration addresses in the Street Guide**

(a) An applicant for voter registration is required to provide election officials with a residence address for voting purposes. In situations where there is no street address consisting of a street name and house number for the residence, the applicant is required to provide a physical description of the residence address that is sufficient to locate said residence on a map for the purpose of determining the applicant's correct precinct and school district. Applications for voter registration shall not be approved and activated unless the residence address can be assigned in the Street Guide to a precinct and school district. This shall apply to applications for new registration and to applications for change of registration. For more information about residence addresses, see 230:15-5-84.

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(b) When the OEMS Street Guide cannot assign an applicant's residence address to a precinct and/or school district, County Election Board personnel shall take the following actions before rejecting the voter registration application for insufficient residence address.

(1) If the street address provided by the voter registration applicant does not match a Street Guide record, County Election Board personnel shall take the following actions before rejecting the application.

(A) Determine whether the given street address may represent a new street or a new extension of an existing street. Create a new Street Guide entry if necessary.

(B) Determine whether the voter has used a variation of the correct street name. For example, if the voter has given the street name "Elm Street" but the correct name of the street is "Elm Tree Street," enter the applicant's residence address using the correct street name. Do not create a new Street Guide entry for the variation of the street name.

(2) If the voter registration applicant has provided a physical description of the location of the residence that is sufficient to determine the voter's precinct and school district, assign the voter according to OEMS Street Guide software instructions. If the applicant used the map grid printed on the Oklahoma Voter Registration Application form, follow these steps as needed.

(A) If the applicant used the map but also provided enough information in the address section of the application to place the applicant in the correct precinct, the map may be discarded.

(B) If information on the map is used to place the applicant in the correct precinct, cut out the map and tape it to the back of the application form. Do not retain any portion of the instruction section that indicates the source of the application.

(C) If the applicant left the address section of the application blank and only provided address information on the map, write "see map" in the address section in such a way that it can be clearly distinguished as an administrative notation. If the applicant wrote anything in the address section, do not write on the application form.

(3) If the applicant has provided a physical description of the location of the residence that is not sufficient to determine the voter's precinct and school district, County Election Board personnel are authorized to attempt to obtain information from the County Assessor's office to identify the correct section-township-range description of the voter's residence and to use that information to assign the voter to a section-township-range geographical location in the Street Guide as outlined below.

(A) An exact match between the applicant's full name and full route and box number, as provided on the voter registration application form, is found in the County Assessor's records. By comparing the physical description given by the applicant with the legal description obtained from the Assessor's records, the

applicant's residence address can be assigned to a section-township-range geographical location in the Street Guide.

(B) An exact match between the applicant's name and route and box number and a record in the County Assessor's office is not found, but there is sufficient information to indicate that the voter registration applicant may be a family member of a property owner who has a route and box number. The applicant may be assigned in the Street Guide and the voter registration application may be approved and activated. Prepare an STR Confirmation Notice to inform the voter of the section-township-range geographical location to which he or she has been assigned. This notice offers the voter the opportunity to provide additional information if the assignment is not correct. Mail the STR Confirmation Notice to the voter with the voter identification card.

(c) If the residence address provided on a voter registration application cannot be assigned in the Street Guide even after taking the actions listed in (b) of this Section, the application must be rejected. Enter a rejection code in OEMS to generate the appropriate rejection notice for the voter. Follow the OEMS software instructions to enter an explanation to the voter of the specific information needed in order to assign the residence address in the Street Guide.

### **230:15-9-25. Processing applications for restricted records status**

(a) Members of the judiciary, district attorneys, assistant district attorneys, law enforcement personnel, corrections officers, and persons covered by victim's protection orders are entitled by law to apply to the Secretary of the County Election Board for restricted records status. [26:4-115.2] The spouse and/or dependent of a voter entitled to apply for restricted records status also may apply for restricted records status. Restricted records status shall apply to the voter registration form in the Central File, to registration information in OEMS, and to materials used to request and cast absentee ballots. Voter registration information for a restricted records voter shall be available only to authorized County Election Board personnel for administrative purposes, with the exception that it may be provided to a candidate or a candidate's representative or other lawful authority in connection with a contest of candidacy, contest of election, or a petition challenge as provided by law. [26:4-115.2]

(b) A voter who is eligible for restricted records status may apply for such status by completing a form in the County Election Board office or by writing a letter to the Secretary of the County Election Board setting forth the following information.

(1) Voter's name as it appears on the voter registration form.

(2) Voter's date of birth.

(3) Last four digits of the voter's social security number.

(4) Reason for application for restricted records status. (If voter is covered by victim's protection order, include

case number, date of issue and the expiration date of the order.)

(5) Voter's signature.

(6) Date.

(c) Upon receipt of an application for restricted records status, the Secretary of the County Election Board shall cause the following action to be taken.

(1) Make a placeholder for the Central File. Write only the voter's name, date of birth, and political affiliation on a blank voter registration application form. Write the words "Restricted Records" in the space for item 6, "Street address or directions to your home."

(2) Remove the voter's original voter registration application form from the Central File and replace it with the placeholder form.

(3) Check the Additional Information file. Remove any documentation of the voter's registration and attach it to the voter registration application form.

(4) Remove the voter's absentee ballot application from the appropriate file and attach it to the voter registration form.

(5) Locate the voter's registration information in OEMS and follow the appropriate software instructions.

(6) Attach the voter's application for restricted records status to the voter's registration form and other materials and file in the restricted records status file.

(d) The Secretary of the County Election Board shall designate a file cabinet with a lock or any other appropriate container with a lock as the restricted records status file. Access to the restricted records status file shall be restricted to the Secretary, Assistant Secretary or Chief Clerk and other County Election Board employees authorized by the Secretary.

(e) Restricted records status shall be effective immediately upon receipt of an application from a qualified voter, and it shall remain in effect until the voter chooses to end it. The voter's registration information may be removed from restricted records status only upon receipt of written instruction from the voter.

(f) Any subsequent application for change of voter registration initiated by a restricted records voter shall be processed routinely, with the exception that the voter registration application form shall be filed in the restricted records status file instead of the Central File. Any application for absentee ballots from such a voter also shall be processed routinely by following the applicable software instructions to enter the application in OEMS and to create either an absentee mailing label or a rejection letter. However, the application for absentee ballots shall be filed in the restricted records status file.

(g) An ACP Application for Absentee Ballots and ACP Voter History Record form received from the State Election Board shall be filed immediately in the restricted records status file. No entry shall be made in OEMS concerning ACP voters and the name, address, and precinct number of an ACP voter shall not appear on any list or report.

**SUBCHAPTER 11. VOTER REGISTRATION LIST MAINTENANCE**

**PART 1. CANCELLATION OF VOTER REGISTRATION**

**230:15-11-6. Cancellation of registration of deceased voter by next of kin**

(a) The registration of a deceased voter may be cancelled upon execution of a Cancellation of Registration of Deceased Voter form by the voter's next of kin. [26:4-120.3] The form may be executed at the County Election Board office ~~or~~ at the deceased voter's polling place or at the next of kin's own polling place in the same county on any election day. [26:4-120.3] The form shall be signed by the next of kin and witnessed by either the County Election Board Secretary, Assistant Secretary or Chief Clerk, or by the Precinct Inspector.

(b) The registration of a deceased voter may be cancelled upon execution of a Request to Cancel Registration of Deceased Voter form by the voter's next of kin. The form shall be completed and signed by the next of kin and notarized by a Notary Public. [26:4-120.3] The form shall be returned to the County Election Board in the county of the deceased voter's residence. [26:4-120.3] A letter containing all the same information requested on the form, signed by the next of kin, and notarized by a Notary Public also shall be accepted to cancel the registration of a deceased voter.

[OAR Docket #03-676; filed 4-21-03]

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

[OAR Docket #03-677]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Filing for State and County Office
- Part 7. Procedure for Filing
- 230:20-3-35. Declarations must be notarized [AMENDED]
- 230:20-3-37. Checking Declarations [AMENDED]
- 230:20-3-39. Fee, petitions attached [REVOKED]
- 230:20-3-39.1. Filing fees deposited in Special Depository Account [NEW]
- Part 9. Withdrawals of Candidates
- 230:20-3-48. Filing fee forfeited upon withdrawal [AMENDED]
- Part 13. ~~Return-Refund~~ of Filing Fees [AMENDED]
- 230:20-3-61. Conditions for ~~return-refund~~ of filing fees [AMENDED]
- 230:20-3-62. ~~Return-Refund~~ of filing fees for Independent candidates [AMENDED]
- 230:20-3-63. Procedure for ~~return-refund~~ of filing fees [AMENDED]
- 230:20-3-64. Time for ~~return-refund~~ of filing fees [AMENDED]
- 230:20-3-65. Forfeited filing fees [AMENDED]
- Subchapter 5. Contests of Candidacy
- 230:20-5-15. Filing fee forfeited when candidacy is stricken [AMENDED]

**AUTHORITY:**

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

**DATES:**

**Comment period:**

January 2, 2003, through February 3, 2003

**Public hearing:**

February 3, 2003

**Adoption:**

February 19, 2003

# Permanent Final Adoptions

**Submitted to Governor:**

February 19, 2003

**Submitted to House:**

February 19, 2003

**Submitted to Senate:**

February 19, 2003

**Gubernatorial approval:**

March 24, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2003

**Final adoption:**

April 15, 2003

**Effective:**

July 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:****Superseded rules:**

Subchapter 3. Filing for State and County Office

Part 7. Procedure for Filing

230:20-3-35. Declarations must be notarized [AMENDED]

230:20-3-37. Checking Declarations [AMENDED]

230:20-3-39. Fee, petitions attached [REVOKED]

230:20-3-39.1. Filing fees deposited in Special Depository Account [NEW]

Part 9. Withdrawals of Candidates

230:20-3-48. Filing fee forfeited upon withdrawal [AMENDED]

Part 13. ~~Return-Refund~~ of Filing Fees [AMENDED]

230:20-3-61. Conditions for ~~return-refund~~ of filing fees [AMENDED]

230:20-3-62. ~~Return-Refund~~ of filing fees for Independent candidates [AMENDED]

230:20-3-63. Procedure for ~~return-refund~~ of filing fees [AMENDED]

230:20-3-64. Time for ~~return-refund~~ of filing fees [AMENDED]

230:20-3-65. Forfeited filing fees [AMENDED]

Subchapter 5. Contests of Candidacy

230:20-5-15. Filing fee forfeited when candidacy is stricken [AMENDED]

**Gubernatorial approval:**

January 2, 2003

**Register Publication:**

20 Ok Reg 477

**Docket number:**

#03-72

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

The amendments in Subchapter 3 are the result of amendments in 26:5-112 and 26:5-113, which were included in SB1350 in 2002. Candidate filing fees now are deposited in the County Election Board Special Depository Account immediately upon receipt, instead of when forfeited as in the past. When a candidate qualifies to have his or her filing fee returned, instead of receiving the actual cashier's check filed with the Declaration of Candidacy, the candidate now will receive a voucher from the Special Depository Account in the amount of the fee. In addition, amendments in several sections incorporate new advice from the Attorney General's office concerning the notarization requirements on Declarations of Candidacy as well a reference to the new statutory requirement (Title 49, Section 1, as amended by HB1971) that a Notary Public's commission number appear on a notarized document. The Declaration of Candidacy form will be revised prior to filing for the 2004 elections to include space for the commission number.

**CONTACT PERSON:**

Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

## SUBCHAPTER 3. FILING FOR STATE AND COUNTY OFFICE

### PART 7. PROCEDURE FOR FILING

**230:20-3-35. Declarations must be notarized**

Declarations of Candidacy must be notarized by a Notary Public or other person authorized by law to administer oaths. [26:5-111] County Election Board personnel shall not act as Notaries Public for this purpose. The Notary Public must include both his or her commission number and commission expiration date. However, failure of a Notary Public to include a Declaration of Candidacy that is in all other respects valid on its face.

**230:20-3-37. Checking Declarations**

(a) The Secretary shall scrutinize all information on the Declaration of Candidacy form. Specifically, the Secretary shall confirm the following facts regarding the Declaration:

(1) The candidate's signature ~~shall be is~~ notarized or witnessed by an appropriate authority. ~~Check the expiration date of a Notary Public's commission to be certain it has not expired.~~ Check to see that both the Notary Public's signature and an impression of the Notary's seal are present on the Declaration of Candidacy form.

(2) The supporting petition ~~shall bear~~ bears the required number of signatures or more, or the accompanying cashier's check or certified check is in the proper amount and form. See 230:20-3-33.

(3) The name of the candidate as it appears on the first line of the Declaration of Candidacy conforms identically to the signature of the candidate at the bottom of the form.

(4) The office sought is complete, including district number if required.

(5) The address of residence listed is within the county (or district) of the office sought.

(6) The mailing address is complete, including zip code.

(7) The box for party candidate, Independent, or Judicial is checked. If the party candidate box is checked, then the name of the political party is written in immediately thereafter. (Judicial candidates file their Declarations of Candidacy only with the Secretary of the State Election Board.)

(8) The precinct and county blanks are completed.

(9) The date of birth blank is completed.

(b) The Secretary has no authority to reject the filing of any candidate unless the Declaration shows on its face that the candidate does not meet the qualifications to become a candidate for the office as contained in the Oklahoma Constitution, statutes, or the resolution calling the election, or in the case of a home rule charter city, in the charter. [26:5-117] If there are errors on the Declaration, the Secretary shall point out such errors to the candidate. For example, one common error is to indicate the current year in the date of birth instead of the actual

year of birth. The candidate then shall correct the errors and sign his initials beside the correction.

**230:20-3-39. Fees, petitions attached [REVOKED]**

~~The cashier's or certified check, or the petition, is part of the Declaration of Candidacy and shall be attached to the Declaration form. All Declarations shall be kept securely locked. No check shall be endorsed.~~

**230:20-3-39.1. Filing fees deposited in Special Depository Account**

The Secretary shall issue a receipt from the Special Depository Account to each candidate who submits a filing fee. The Secretary shall endorse the filing fee check and deposit it immediately in the County Election Board's Special Depository Account.

**PART 9. WITHDRAWALS OF CANDIDATES**

**230:20-3-48. Filing fee forfeited upon withdrawal**

Any candidate who withdraws his candidacy forfeits his filing fee.

**PART 13. RETURN-REFUND OF FILING FEES**

**230:20-3-61. Conditions for return refund of filing fees**

(a) Filing fees are ~~returned-refunded~~ to a candidate for a party nomination only when he meets one of the following conditions:

- (1) He is unopposed in the Primary Election. [26:5-113]
- (2) He is a candidate in the Runoff Primary Election. [26:5-113]
- (3) He receives more than 15 percent of the votes cast in his race in the Primary Election. [26:5-113]

(b) To aid in calculating the required percentage of votes cast, the following example is offered. In the Primary Election, the following candidates for County Treasurer received the following votes: Carr, 1,212 votes; Berger, 715 votes; Lawson, 106 votes. The total votes cast in this race was 2,033. Fifteen percent of 2,033 is 304.95. The number of votes needed to have filing fees returned must exceed 304.95. Therefore, the minimum number of votes required to have one's filing fee ~~returned-refunded~~ is 305. Carr and Berger received more than the number of votes needed to have their filing fees ~~returned-refunded~~. Lawson received fewer than the required number; therefore, Lawson's filing fee is forfeited.

**230:20-3-62. Return-Refund of filing fees for Independent candidates**

Filing fees are ~~returned-refunded~~ to an Independent candidate only if he receives more than 15 percent of the votes cast in his race in the General Election.

**230:20-3-63. Procedure for return-refund of filing fees**

~~The Secretary shall endorse checks for filing fees before the checks are returned to candidates. The filing fee check shall be returned to the candidate by mail, with return receipt requested, to the mailing address listed on his Declaration of Candidacy form. The filing fee check may be returned to a candidate in person, but a receipt must be obtained. As soon as practicable after a candidate qualifies for a filing fee refund as outlined in 230:20-3-61, the Secretary of the County Election Board shall cause a voucher, made in the appropriate amount and payable to the candidate, to be prepared and registered with the County Treasurer. The applicable accounting software instructions shall be followed to prepare the voucher and to record the refund in OEMS.~~

**230:20-3-64. Time for return-refund of filing fees**

No filing fee may be ~~returned-refunded~~ to a candidate until after the contest period following the filing period, in the case of unopposed candidates, or until after the contest period following an election, in the case of all other candidates, has expired.

**230:20-3-65. Forfeited filing fees**

~~In the event a filing fee is forfeited by virtue of the failure of a candidate to meet one of the conditions outlined in 230:20-3-61 and 230:20-3-62, the fee shall be deposited in the County Election Board's Special Depository Account. [26:5-113] A candidate forfeits the filing fee submitted with the Declaration of Candidacy under any one of the following conditions.~~

- (1) The candidate withdraws his candidacy.
- (2) The candidate fails to meet one of the conditions listed in 230:20-3-61(a).
- (3) The candidate's name is stricken from the ballot as a result of a contest of candidacy.

**SUBCHAPTER 5. CONTESTS OF CANDIDACY**

**230:20-5-15. Filing fee forfeited when candidacy is stricken**

In the event a candidate's candidacy is stricken, his filing fee is forfeited ~~and shall be disposed of as outlined in 230:20-3-65.~~

[OAR Docket #03-677; filed 4-21-03]

**TITLE 230. STATE ELECTION BOARD  
CHAPTER 25. BALLOT PRINTING**

[OAR Docket #03-678]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 7. Competitive Bidding Process for Ballot Printing  
230:25-7-1. Competitive bidding required [AMENDED]

# Permanent Final Adoptions

230:25-7-4. Contract requirements [AMENDED]  
230:25-7-5. Printer's ~~bond~~ certificate of insurance [AMENDED]

## AUTHORITY:

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

## DATES:

### Comment period:

January 2, 2003, through February 3, 2003

### Public hearing:

February 3, 2003

### Adoption:

February 19, 2003

### Submitted to Governor:

February 19, 2003

### Submitted to House:

February 19, 2003

### Submitted to Senate:

February 19, 2003

### Gubernatorial approval:

March 24, 2003

### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2003

### Final adoption:

April 15, 2003

### Effective:

July 1, 2003

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 7. Competitive Bidding Process for Ballot Printing  
230:25-7-1. Competitive bidding required [AMENDED]  
230:25-7-4. Contract requirements [AMENDED]  
230:25-7-5. Printer's ~~bond~~ certificate of insurance [AMENDED]

### Gubernatorial approval:

January 2, 2003

### Register Publication:

20 Ok Reg 476

### Docket number:

#03-73

## INCORPORATION BY REFERENCE:

n/a

## ANALYSIS:

Senate Bill 1350 amended 26:6-120 to require that a contract for ballot printing be awarded to the bidder evaluated as the "best value" according to definitions included in the Oklahoma Central Purchasing Act and to require the successful bidder for a ballot printing contract to provide a "certificate of insurance," instead of the performance bond required in the past. Amendments in several sections in Subchapter 7 reflect one or both of these changes.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

## SUBCHAPTER 7. COMPETITIVE BIDDING PROCESS FOR BALLOT PRINTING

### 230:25-7-1. Competitive bidding required

(a) All ballots which the County Election Board is responsible for printing shall be printed by a printer selected through the county's competitive bidding process. [26:6-120] The competitive bidding process shall be observed for all ballot printing regardless of the total cost of the printing. [26:6-120]

The Secretary shall follow the procedure established by the County Purchasing Agent to cause advertisement for bids for printing of all ballots. A contract for ballot printing shall be awarded to the lowest and best bidder or to the bidder determined to be the best value, according to the Oklahoma Central Purchasing Act. [26:6-120]

(b) The State Election Board shall maintain a list of printers that have demonstrated the ability to print ballots that can be read accurately by the voting device. See 230:25-19-7. The Secretary of the County Election Board and the County Purchasing Agent are advised to consider these printers when advertising for bids for ballot printing.

### 230:25-7-4. Contract requirements

The Secretary shall consult the County Purchasing Agent regarding the county's requirements for drawing up a contract with the successful bidder. The contract shall include, but shall not be limited to, the printer's responsibilities insofar as the quantity, size and types of ballots to be printed, delivery dates and ~~the condition for forfeiture of the printer's bond~~ the conditions for making a claim against the printer's insurance. If the election involves candidates, the contract shall allow the Secretary and the successful bidder to meet following the filing period to determine the actual layout of the ballot, the number of races that will appear on the ballots and the quantity of regular and absentee ballots that will be required for the election. The State Election Board shall provide a model contract for use by County Election Board Secretaries.

### 230:25-7-5. Printer's ~~bond~~ certificate of insurance

(a) The successful bidder for a ballot printing contract ~~for an individual election is required to post a bond of double the amount of the bid. [26:6-120] The bond shall be taken in the name of the county and shall be conditioned upon the faithful performance of the contract~~ provide a copy of the bidder's certificate of insurance to the County Purchasing Agent at the time the contract is awarded to ensure proper and prompt completion of the work as required by the contract provisions and the bidding papers. [26:6-120] The certificate of insurance shall be in the amount specified by the county purchasing agent. *The successful bidder shall provide proof of insurance coverage for the duration of the contract. [26:6-120]*

(b) ~~The successful bidder for a six month or a twelve month ballot printing contract is required to post a bond of double the amount of the cost of the most expensive ballots for any election covered by the bid. [26:6-120] The bond shall be in effect throughout the term of the contract. The bond shall be taken in the name of the county and shall be conditioned upon the faithful performance of the contract. [26:6-120]~~

(c) The Secretary shall request the District Attorney or County Purchasing Agent to assist in requiring the printer to ~~post the bond~~ provide an appropriate certificate of insurance.

[OAR Docket #03-678; filed 4-21-03]

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

[OAR Docket #03-679]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 230:30-1-2. Definitions [NEW]
- Subchapter 3. Authorization for Absentee Voting
- 230:30-3-3. Voters eligible for absentee ballots [AMENDED]
- 230:30-3-4. Voters not eligible for services of nursing home Absentee Voting Board [NEW]
- Subchapter 5. Applications for Absentee Ballots
- 230:30-5-8.1. Time for absentee ballot applications [AMENDED]
- Subchapter 7. Absentee Voting Boards
- 230:30-7-6. Scheduling Absentee Voting Boards for an election [AMENDED]
- 230:30-7-9. Procedure for the nursing home Absentee Voting Board [AMENDED]
- 230:30-7-11.1. Preparation of polling place and voting device for in-person absentee voting [AMENDED]
- 230:30-7-11.2. Assistance for the in-person Absentee Voting Board [AMENDED]
- 230:30-7-11.3. Sheriff provides security for memory pack and voted ballots [AMENDED]
- 230:30-7-13. In-person absentee voting procedure for military discharge or military leave voter [AMENDED]
- 230:30-7-14. Verifying voter registration information and status of in-person absentee voters [AMENDED]
- Subchapter 9. Processing Applications
- 230:30-9-3. Processing applications for absentee ballots [AMENDED]
- 230:30-9-7. Absentee ballot applications for Address Confidentiality Program participants [NEW]
- Subchapter 11. Receiving and Processing Absentee Ballots
- 230:30-11-1. ~~Handling of Preparing absentee ballot box and handling~~ outer envelopes [AMENDED]
- 230:30-11-2. Opening outer envelopes and examining affidavits [AMENDED]
- 230:30-11-3. Opening and storing properly executed affidavits [AMENDED]
- 230:30-11-6. Transmitting absentee ballots [AMENDED]
- 230:30-11-7. Undeliverable absentee ballots returned by postal service to County Election Board [NEW]
- Subchapter 17. Replacement of Lost or Undelivered Absentee Ballot
- 230:30-17-1. Replacement of lost or undelivered absentee ballots [AMENDED]
- 230:30-17-2. Applications for ~~second set of replacement~~ absentee ballots [AMENDED]
- 230:30-17-3. Voter's agent [AMENDED]
- 230:30-17-4. Transmittal of ~~second set of replacement~~ absentee ballots [AMENDED]
- Subchapter 23. Suspected Violations of Absentee Voting Laws
- 230:30-23-1. Suspicious activities [AMENDED]

**AUTHORITY:**

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

**DATES:**

**Comment period:**

January 2, 2003, through February 3, 2003

**Public hearing:**

February 3, 2003

**Adoption:**

February 19, 2003

**Submitted to Governor:**

February 19, 2003

**Submitted to House:**

February 19, 2003

**Submitted to Senate:**

February 19, 2003

**Gubernatorial approval:**

March 24, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2003

**Final adoption:**

April 15, 2003

**Effective:**

July 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- Subchapter 1. General Provisions
- 230:30-1-2. Definitions [NEW]
- Subchapter 3. Authorization for Absentee Voting
- 230:30-3-3. Voters eligible for absentee ballots [AMENDED]
- 230:30-3-4. Voters not eligible for services of nursing home Absentee Voting Board [NEW]
- Subchapter 5. Applications for Absentee Ballots
- 230:30-5-8.1. Time for absentee ballot applications [AMENDED]
- Subchapter 7. Absentee Voting Boards
- 230:30-7-6. Scheduling Absentee Voting Boards for an election [AMENDED]
- 230:30-7-9. Procedure for the nursing home Absentee Voting Board [AMENDED]
- 230:30-7-11.1. Preparation of polling place and voting device for in-person absentee voting [AMENDED]
- 230:30-7-11.2. Assistance for the in-person Absentee Voting Board [AMENDED]
- 230:30-7-11.3. Sheriff provides security for memory pack and voted ballots [AMENDED]
- 230:30-7-13. In-person absentee voting procedure for military discharge or military leave voter [AMENDED]
- 230:30-7-14. Verifying voter registration information and status of in-person absentee voters [AMENDED]
- Subchapter 9. Processing Applications
- 230:30-9-3. Processing applications for absentee ballots [AMENDED]
- Subchapter 11. Receiving and Processing Absentee Ballots
- 230:30-11-1. ~~Handling of Preparing absentee ballot box and handling~~ outer envelopes [AMENDED]
- 230:30-11-2. Opening outer envelopes and examining affidavits [AMENDED]
- 230:30-11-3. Opening and storing properly executed affidavits [AMENDED]
- 230:30-11-6. Transmitting absentee ballots [AMENDED]
- 230:30-11-7. Undeliverable absentee ballots returned by postal service to County Election Board [NEW]
- Subchapter 17. Replacement of Lost or Undelivered Absentee Ballot
- 230:30-17-1. Replacement of lost or undelivered absentee ballots [AMENDED]
- 230:30-17-2. Applications for ~~second set of replacement~~ absentee ballots [AMENDED]
- 230:30-17-3. Voter's agent [AMENDED]
- 230:30-17-4. Transmittal of ~~second set of replacement~~ absentee ballots [AMENDED]
- Subchapter 23. Suspected Violations of Absentee Voting Laws
- 230:30-23-1. Suspicious activities [AMENDED]

**Gubernatorial approval:**

January 2, 2003

**Register Publication:**

20 Ok Reg 477

**Docket number:**

#03-74

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

In 2002, Senate Bill 867 amended 26:14-115.4, changing the days and hours of in-person absentee voting. In-person absentee voting now occurs from 8 a.m. to 6 p.m. on Friday and Monday before an election and from 8 a.m. to 1 p.m. on Saturday before an election. Amendments in several Sections in Subchapters 5 and 7 update references to days and times for in-person absentee voting. Also in 2002, Senate Bill 1350 amended several statutes that concern absentee voting - Title 26, Sections 14-108; 14-113.2; 14-114; 14-115; 14-121; 14-121.1. As a result of these amendments, a new Definitions Section is proposed in Subchapter 1 and amendments are proposed in several Sections in Subchapters 3, 5, 7, 9, 11, and 17.

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Amendments in Subchapter 1 create a Definitions Section. "Nursing home" and "convalescent hospital" are defined as meaning a "nursing facility" as defined in Title 63, Section 1-1902.

Amendments in Subchapter 3 concern the new days and hours of in-person absentee voting and a new Section identifies the types of facilities in which residents may receive the services of a nursing home Absentee Voting Board.

Amendments in Subchapter 5 concern the new days and hours for in-person absentee voting.

Amendments in Subchapter 7 concern the new days and hours for in-person absentee voting; a reference to a new item included on a form used by the nursing home Absentee Voting Board; instructions for handling absentee ballot materials from voters whose address information is confidential; and new provisions allowing the spouse or dependent of a military voter recently discharged or home on leave or of an overseas voter recently returned home to cast an in-person absentee ballot. References to the new title of a form used by such voters also are amended.

The amendments in Subchapter 9 concern applications for absentee ballots from voters who have asked that their residence and mailing address information be kept confidential.

The amendments in Subchapter 11 include the new provision that private mail delivery services, such as Federal Express, may be used by a voter to return voted absentee ballots to the County Election Board. A new Section concerns handling absentee ballots that are returned undelivered by the post office. When absentee ballots are returned undelivered, the County Election Board is instructed to consider the application for absentee ballots cancelled. Guidelines are offered to the County Election Board Secretary who wishes to attempt to contact the voter for a new absentee ballot mailing address when there is sufficient time for the voter to submit a new application and to receive, vote and return absentee ballots. Other amendments concern a new provision making it illegal for one person, except members of Absentee Voting Boards, to witness the signatures on the affidavits of more than five physically incapacitated absentee voters. The County Election Board is instructed to count the ballots but to report the witness's name to the District Attorney. Also, one amendment includes new advice from the Attorney General concerning notarization requirements on some absentee ballot affidavits.

Several amendments in Subchapter 17 include a new requirement that applications for a replacement set of absentee ballots be witnessed or acknowledged in the same manner as the affidavit envelope for the voter's ballot.

The amendment in Subchapter 23 concerns the new provision making it illegal for one person, except members of Absentee Voting Boards, to witness the signatures on the affidavits of more than five physically incapacitated absentee voters.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### **230:30-1-2. Definitions**

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

"Convalescent hospital" means a nursing facility as defined in Title 62 O.S. 2001, Section 1-1902.

"Nursing home" means a nursing facility as defined in Title 62 O.S. 2001, Section 1-1902.

## SUBCHAPTER 3. AUTHORIZATION FOR ABSENTEE VOTING

### **230:30-3-3. Voters eligible for absentee ballots**

(a) ~~Any registered voter may apply for an absentee ballot~~ Any registered voter may request absentee ballots for any election in which he-the voter is eligible to vote. An absentee voter shall not be required to state any reason for the request. [26:14-105]

(b) Registered voters may apply for absentee ballots by stating one of the following reasons.

(1) **Nursing home voters.** Nursing home voters are registered voters who swear or affirm that they are physically incapacitated and ~~confined to a nursing home or convalescent hospital within the county~~ confined to a nursing home or convalescent hospital within the county in which they are registered to vote. [26:14-115] They may vote by absentee ballot.

(2) **Physically incapacitated voters.** Physically incapacitated voters are registered voters who swear or affirm that they are physically ~~unable to vote in person at their precincts~~ unable to vote in person at their precinct polling places on the day of an election because they are physically incapacitated but are not confined to a nursing home or convalescent hospital within the county in which they are registered to vote. [26:14-110.1(1)] They may vote by absentee ballot.

(3) **Voters charged with the care of physically incapacitated persons.** Voters charged with the care of physically incapacitated persons are registered voters who swear or affirm that they are physically unable to vote in person at their precincts on the day of the election because they are ~~charged with the care of another person who is physically incapacitated and who cannot be left unattended~~ charged with the care of a physically incapacitated person who cannot be left unattended. [26:14-110.1] They may vote by absentee ballot.

(4) **Emergency incapacitated voters.** Emergency incapacitated voters are registered voters who ~~become incapacitated after 5 p.m. on Tuesday preceding an election and are unable to vote in person at their precincts on the day of the election~~ become incapacitated after 5 p.m. on Tuesday preceding an election and are unable to vote at their precinct polling places on election day. [26:14-115.1] They may vote by absentee ballot.

(5) **Military voters.** Military voters are residents of Oklahoma who are members of the Armed Forces or Merchant Marine, and their spouses and dependents, who are 18 years of age or older. They may vote by absentee ballot. These persons need not be registered, but must be qualified to be registered. [26:14-116]

(6) **Overseas voters.** Overseas voters are residents of Oklahoma who are citizens of the United States residing outside the territorial limits of the United States, and their spouses and dependents, who are 18 years of age or older. They may vote by absentee ballot. These persons need not be registered, but must be qualified to be registered. [26:14-116]

(c) Any registered voter may apply for an in-person absentee ballot at the in-person absentee polling place on ~~Thursday,~~ Friday, Saturday or Monday preceding an election. [26:14-115.4(A)] An in-person absentee voter shall not be required to state a reason for the request but shall be required to swear or affirm that he has not voted a regular absentee ballot and that he will not vote at the polling place on election day. [26:14-115.4(A)]

**230:30-3-4. Voters not eligible for services of nursing home Absentee Voting Board**

Registered voters who reside in an assisted living center as defined by law and registered voters who are in attendance at an adult day care center as defined by law may apply for and cast absentee ballots by mail or at the in-person absentee polling place. Registered voters in such facilities shall not be entitled to the services of a nursing home Absentee Voting Board. In the event a nursing home is housed in the same location as an assisted living center or an adult day care center, only residents of the nursing home portion of the facility are entitled to the services of a nursing home Absentee Voting Board.

**SUBCHAPTER 5. APPLICATIONS FOR ABSENTEE BALLOTS**

**230:30-5-8.1. Time for absentee ballot applications**

- (a) All absentee voters, except in-person absentee voters and emergency incapacitated voters, may apply any time prior to 5 p.m. on the Wednesday preceding the election. [26:14-103] The application must be in the hands of County Election Board personnel by that time. An application received after 5 p.m. on Wednesday preceding the election - even if postmarked prior to that time must be rejected.
- (b) Applications for in-person absentee ballots may only be made from ~~9 a.m. to 5 p.m.~~ 8 a.m. to 6 p.m. on Thursday, Friday or Monday or from 8 a.m. to 1 p.m. on Saturday immediately preceding an election at the in-person absentee polling place. [26:14-115.4]
- (c) Applications for emergency incapacitated absentee ballots may be made any time after 5 p.m. on Tuesday preceding an election through 7 p.m. on election day. [26:14-115.1]
- (d) The County Election Board office shall remain open until 5 p.m. on Wednesday preceding an election so that applications may be made in person until that time.

**SUBCHAPTER 7. ABSENTEE VOTING BOARDS**

**230:30-7-6. Scheduling Absentee Voting Boards for an election**

(a) **Notification of Absentee Voting Board members.** At least ten days before the election, the Secretary of the County Election Board shall notify the members of one or more Absentee Voting Boards of the day or days the services of the Absentee Voting Board will be required. The Secretary also

shall request the members of the Absentee Voting Board to meet on Wednesday before the election to make plans for their work.

(b) **Scheduling the nursing home Absentee Voting Board.** On Wednesday before the election, the Secretary shall work with the Absentee Voting Board to schedule visits to each affected nursing home or convalescent hospital. Visits must be scheduled on Friday, Saturday or Monday immediately preceding the election. [26:14-115(1)] Visits shall be planned to all nursing homes in as few days as possible, preferably in a single day, and preferably on Friday. The Secretary shall consult the administrator of each affected nursing home to schedule a time that will be convenient for the Absentee Voting Board to visit.

(c) **Scheduling the in-person Absentee Voting Board.** An Absentee Voting Board is required to be on duty at the in-person absentee polling place from ~~9 a.m. to 5 p.m. on Thursday,~~ 8 a.m. to 6 p.m. on Friday and Monday and from 8 a.m. to 1 p.m. on Saturday immediately preceding an election. [26:14-115.4]

(d) **Notifying Sheriff of in-person absentee voting.** The Secretary shall notify the County Sheriff of the dates for in-person absentee voting for an election and shall arrange for the Sheriff to provide security for the memory pack and the voted ballots as outlined in 230:30-7-11.3.

**230:30-7-9. Procedure for the nursing home Absentee Voting Board**

- (a) On the day scheduled for the Absentee Voting Board to visit nursing homes, the Board shall meet with the Secretary of the County Election Board at the County Election Board office. The members shall sign the Absentee Voting Board Record. The ballot box shall be prepared as outlined in 230:30-7-8 and issued to the nursing home Absentee Voting Board members. Adequate supplies and ballots shall be provided to anticipate voter assistance requirements and spoiled ballots. Precautions shall be taken to insure accounting for each ballot. The Secretary shall instruct the Absentee Voting Board as to the type of ballots each voter shall receive in case a voter spoils a ballot and a new ballot must be issued.
- (b) The Absentee Voting Board shall observe the following procedure:

- (1) The two members of the Absentee Voting Board shall travel together in one automobile, taking all necessary forms and supplies.
- (2) Upon arrival at a nursing home, the Absentee Voting Board shall make arrangements for those incapacitated voters listed on the Absentee Voting Board Record to vote. Only those persons whose names are on the Absentee Voting Board Record shall be permitted to vote. If the message "Confirm Address" or "Insufficient Address" appears on the Absentee Voting Board Record, the Absentee Voting Board members shall give the voter a copy of the Address Information Requested handout and shall ask the voter to complete an Oklahoma Voter Registration Application form.
- (3) The voter must mark his ballots with a ballot marking pen in the presence of the Absentee Voting Board, but

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in such a manner as to make it impossible for anyone but the voter to tell how the ballots are marked. [26:14-115(3)]

(4) *Insofar as is possible, the voting procedure shall be the same as if the voter were casting his ballot in person at a precinct.* [26:14-115(3)] This includes providing assistance, as provided by law, to persons who are unable to mark their ballots due to physical or visual disabilities or illiteracy. The procedures outlined in the PRECINCT PROBLEM SOLVER shall be followed. However, the Voter Assistance Form shall not be used. The person who marks the voter's ballot shall complete and sign the "Assistant's Oath" on the affidavit envelope. [26:14-113.2]

(5) While a voter may receive assistance, only the voter himself may determine how the ballots are to be marked. If the voter is unable to instruct the person providing assistance, the voter shall not be permitted to vote. If necessary, the voter also may receive assistance to complete the Oklahoma Voter Registration Application.

(6) The procedure outlined in the PRECINCT PROBLEM SOLVER shall be followed if a voter spoils a ballot. The Spoiled Ballot Affidavit shall be used as required.

(7) When the voter has marked his ballots, he shall fold them and seal them in the white ballots envelope. [26:14-115(4)] He then shall seal the white ballots envelope inside the pink affidavit envelope. [26:14-115(4)]

(8) The voter then shall complete and sign the affidavit. [26:14-115(4)] The voter's signature must be witnessed by both members of the Absentee Voting Board. [26:14-115(4)] The members shall sign the affidavit in the space for witnesses but shall not be required to provide their addresses.

(9) The affidavit envelope then shall be placed in the outer envelope and sealed. [26:14-115(5)]

(10) Each outer envelope containing absentee ballots immediately shall be placed in the absentee ballot box.

(11) A member of the Absentee Voting Board shall ~~write the month and day in numbers in the "Did Not Vote" column on the Absentee Voting Board Record if a voter does not vote~~ check either the "Did Vote" column or the "Did Not Vote" column, as appropriate.

(12) All Oklahoma Voter Registration Application forms completed by voters to update their voter registration information shall be placed with other voting supplies for return to the County Election Board office.

(13) When the Absentee Voting Board has completed its visits to each nursing home or convalescent hospital scheduled for that particular day, the members shall return to the County Election Board office and leave the ballot box in the custody of the Secretary. [26:14-115(5)] The Absentee Voting Board shall account for all supplies and unused ballots. The ballot box shall be removed from the County Election Board office only when the Absentee Voting Board is performing its duties. The ballot box, once locked, shall not be unlocked again until it is time for the County Election Board members to remove the outer envelopes. See 230:30-11-2.

### **230:30-7-11.1. Preparation of polling place and voting device for in-person absentee voting**

(a) **Receiving supplies and setting up polling place on first day.** On each in-person absentee voting day, the Absentee Voting Board members meet in the County Election Board office at the time set by the County Election Board Secretary to receive their supplies for the day. The Absentee Voting Board members then go together to the in-person absentee polling place. A table and chairs, one or more voting devices, voting booths, and an OEMS terminal or the Central File should already be in place at the in-person absentee polling place when the Absentee Voting Board members arrive. The Absentee Voting Board members unpack the supplies and prepare each voting device as outlined in (b) of this Section. The Absentee Voting Board members must be ready to receive applications from in-person absentee voters at ~~9 a.m.~~ 8 a.m.

(b) **Preparing voting device on first day.** The Absentee Voting Board prepares each in-person voting device as outlined in 230:35-5-32.

(c) **Receiving supplies and setting up polling place on second and third days.** On the second and third days of in-person absentee voting, the members of the Absentee Voting Board meet at the County Election Board office at the time specified by the Secretary to receive their supplies for the day. The Absentee Voting Board members also must receive the memory pack for each voting device from the Sheriff no later than ~~8:45 a.m.~~ 7:45 a.m. [25:14-115.4] The Absentee Voting Board members then follow the instructions in (d) of this Section to prepare each voting device.

(d) **Preparing voting device on second and third days.** On the second and third days of in-person absentee voting, the Absentee Voting Board receives the memory pack from the Sheriff and prepares the voting device as follows:

(1) Follow the procedure outlined in 230:35-5-32(a)(1) through (9).

(2) After unlocking the back panel, insert the memory pack into the voting device. Secure the memory pack door with a seal provided by the Secretary of the County Election Board. Verify that the number on the seal is the same as the number recorded on the Voting Device Report. Check the voting device serial number printed on the back of the voting device and verify that it is the same as the serial number recorded on the Voting Device Report. If either of these numbers does not match the numbers recorded on the Voting Device Report, tell the Secretary of the County Election Board immediately.

(3) Plug the voting device into the electrical outlet. The voting device will immediately begin printing the message **RESTARTED WITHOUT ZEROING TOTALS**. The voting device is then ready to accept ballots. **DO NOT** tear off the voting device tape at any time during in-person absentee voting.

(4) If the message does not print out automatically when the device is plugged in, try plugging the voting device into a different electrical outlet. If the message still does not print, tell the Secretary of the County Election Board immediately.

(5) Check the front panel of the voting device. The red light indicates the power is on. The green light indicates the voting device is ready to accept ballots.

(6) Close and lock the rear panel door. Replace the keys in the voting device key envelope, but do not seal the envelope.

(7) Repeat steps (1) through (6) of this subsection for each additional in-person absentee voting device.

**230:30-7-11.2. Assistance for the in-person Absentee Voting Board**

The County Election Board Secretary may assign employees of the County Election Board to assist the in-person Absentee Voting Board at the in-person polling place. Assistance may include distributing Application for In-Person Absentee Ballots forms; verifying voter registration in OEMS or, in the Central File, or in the restricted records status file; locating appropriate ballots; directing voters to the correct voting device if more than one is used; and helping to maintain order in the in-person absentee polling place.

**230:30-7-11.3. Sheriff provides security for memory pack and voted ballots**

The Sheriff is required to provide security for the memory pack from the in-person absentee voting device and for the voted ballots in the same manner as for absentee and regular ballots on election night. [26:14-115.4] See 230:35-3-86. The Sheriff shall receive the memory pack, sealed inside the appropriate envelope, and the voted ballots, sealed inside a ballot transfer box, at the end of each day of in-person absentee voting. The Sheriff shall return the memory pack to the in-person Absentee Voting Board members no later than ~~8:45 a.m.~~ 7:45 a.m. on each following day of in-person absentee voting. On election day, the Sheriff shall return the memory pack to the Secretary in the presence of the members of the County Election Board when it is time to begin counting absentee ballots received through the mail or from the nursing home Absentee Voting Board. The Sheriff retains custody of the voted in-person absentee ballots unless an election night recount is required. [26:14-115.4] See 230:30-19-4(8) and 230:35-3-85.1.

**230:30-7-13. In-person absentee voting procedure for military discharge or military leave voter**

If voter registration information for an in-person absentee ballot applicant cannot be found in the Central File or in OEMS and that applicant informs the Absentee Voting Board members that he or she is on leave or has recently been honorably discharged from the United States Armed Forces or has recently been terminated in service or employment overseas, the applicant may be entitled to vote without being registered. [26:14-121] The spouse or dependent of such a person also is entitled to vote without being registered. [26:14-121] Refer to the "Military Discharge or Military Leave" section of the PRECINCT PROBLEM SOLVER (230:35-5-114) and follow those instructions to assist this applicant and to use the ~~Military Discharge~~ Overseas Affidavit, if necessary. Ask a County

Election Board employee for help to determine the correct absentee ballot to issue to the voter.

**230:30-7-14. Verifying voter registration information and status of in-person absentee voters**

The Absentee Voting Board members are required to verify the registration information of each voter who applies for an in-person absentee ballot. The County Election Board Secretary shall instruct the Absentee Voting Board members to use one of the following methods to verify voter registration information and status. However, the in-person Absentee Voting Board is required to use the OEMS terminal when a school district or vocational-technical school district election is held.

(1) **OEMS terminal.** The Absentee Voting Board members may use an OEMS terminal set up in public access mode to verify voter registration. County Election Board personnel shall place an OEMS terminal at the in-person absentee polling place location and shall prepare the terminal for use. County Election Board personnel shall teach the Absentee Voting Board members to use the terminal to find voter registration information about each applicant for in-person absentee ballots. While viewing the applicant's voter registration information in OEMS, the Absentee Voting Board member also shall determine whether the voter is active or inactive. If the "Voter Status" field indicates the voter is inactive, if the number in the section field is greater than "36," or if the "SD" field on the screen is blank, the Absentee Voting Board member shall give the voter a copy of the "Information Requested" handout and an Oklahoma Voter Registration Application form and shall ask the voter to use the form to update his or her voter registration information. In the event that a voter's residence address, mailing address, and precinct information does not appear on the screen, ask a County Election Board employee for help to process the voter.

(2) **Central File.** The Absentee Voting Board members may use the Central File to verify voter registration, except in school or vocational-technical district elections. The Absentee Voting Board member shall locate the voter's original registration form in the Central File. If the Absentee Voting Board uses the Central File to verify registration information, the County Election Board Secretary may provide them with a copy of the Registered Voter Mailing List report that lists only inactive voters. After locating an applicant's original registration form in the Central File and recording the precinct number, the Absentee Voting Board member looks for the voter's name on the Registered Voter Mailing List report for that precinct. If the voter's name is on the report, the Absentee Voting Board member gives the voter a copy of the "Address Information Requested" handout and an Oklahoma Voter Registration Application form and asks the voter to update his or her voter registration information. In the event that a voter's residence address, mailing address, and precinct information does not appear on the registration form in the Central File, ask a County Election Board employee for help to process the voter.

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## SUBCHAPTER 9. PROCESSING APPLICATIONS

### 230:30-9-3. Processing applications for absentee ballots

Applications from all absentee voters, except military and overseas voters, shall be processed according to the following procedures:

- (1) Indicate on the application form the date on which the application is received at the County Election Board office.
- (2) Enter the application information into OEMS. When applications from absentee voters, nursing home voters, physically incapacitated voters, voters charged with the care of physically incapacitated persons and emergency incapacitated voters are entered into OEMS, the system automatically verifies the applicant's registration. If an applicant is not registered, see 230:30-9-4.
- (3) If a voter requests absentee ballots for a school district other than the one to which he or she is assigned, mark the appropriate field on the OEMS screen. OEMS will generate a notice that tells the voter that he or she is assigned to a different school district than the one for which ballots were requested and that ballots for the assigned district will be issued. If a voter is not assigned to a school district, the school district field will be empty. Enter the appropriate code for the school district indicated by the voter on the absentee ballot application in the school district field.
- (4) If the application must be rejected for any reason, enter the reason for the rejection in the appropriate place on the screen. OEMS will produce a Notice of Rejection of Absentee Ballot Application letter for the voter. However, in the event that an Application for In-Person Absentee Ballot has been rejected, it shall not be entered into OEMS.
- (5) Designate the election or elections for which the voter is requesting ballots in the appropriate place on the screen.
- (6) Write the applicant's voter identification number and registration status (active or inactive) on the application form. Fill in the information required in the shaded "For Election Board Use Only" box in the lower right corner of the form.
- (7) File the application form in the appropriate absentee voting materials file. If the applicant is a restricted records status voter, file the application in the restricted records status file.
- (8) If the application is from an in-person absentee voter and ballots were issued by the Absentee Voting Board, enter the date the application was processed by the Absentee Voting Board in the appropriate space on the screen to give the voter credit for voting. See 230:30-7-12. If the application was rejected, no entry shall be made in OEMS. A rejected Application for In-Person Absentee Ballot shall be retained with other rejected applications.
- (9) If ballots are available, immediately prepare the appropriate absentee voter packet with the correct ballots

for the voter and mail it. See 230:30-9-1 and 230:30-9-2. If the letter "I" appears in the upper-right corner of the absentee mailing label, the voter is either an inactive voter or a voter unassigned to a school district due to insufficient address information. Enclose an Oklahoma Voter Registration Application form and an Instructions for Updating Voter Registration Information sheet with the absentee voter packet and ballots.

### 230:30-9-7. Absentee ballot applications for Address Confidentiality Program participants

- (a) Certified participants in the Address Confidentiality Program (ACP) who apply to the Secretary of the State Election Board for registration as ACP voters shall receive absentee ballots by mail for all elections in which they are eligible to vote for a period of up to four years from the date the application for ACP voter registration is received by the State Election Board.
- (b) An ACP Application for Absentee Ballots form shall be filed in the restricted records status file immediately upon receipt from the State Election Board. See 230:15-9-25. No information about an ACP voter shall be entered in OEMS. When preparing absentee ballots to be mailed to voters for any election, the Secretary or a designated County Election Board employee shall check the ACP applications in the restricted records status file to determine whether any ACP voter is eligible to receive ballots for the election. The following procedure shall be observed to prepare absentee voter packets and absentee ballots for ACP voters.
  - (1) Assemble an absentee voter packet. See 230:30-9-2(1). Write or stamp "ACP" on the outer envelope. Write or type the election date on the outer envelope.
  - (2) Write or type the voter's name and ACP address and the County Election Board's mailing address as the return address on the yellow mailing envelope. Write or type the County Election Board's mailing address and the voter's ACP address as the return address on the outer envelope.
  - (3) Enclose the appropriate ballot cards and mail the packet to the voter.
  - (4) Record the election date, election description and the date mailed on the voter's ACP Voter History Record form.
  - (5) When an absentee outer envelope marked "ACP" is received, indicate the date on the voter's ACP Voter History Record form. Place the outer envelope in the locked ballot box with other absentee ballots for the election.
  - (6) If an ACP voter's absentee ballot must be rejected for one of the reasons listed in 230:30-11-2, write a letter to notify the voter of the reason the ballot could not be counted and mail it to the voter's ACP address.
- (c) When an ACP voter's absentee application expires, or if the State Election Board sends notification to the Secretary of the County Election Board that an ACP voter has left the Address Confidentiality Program, write "Cancelled" and the date on the voter's ACP Absentee Application form and retain it in a separate section of the restricted records status file for 24 months.

**SUBCHAPTER 11. RECEIVING AND PROCESSING ABSENTEE BALLOTS**

**230:30-11-1. Handling of Preparing absentee ballot box and handling outer envelopes**

(a) Upon receipt of the first outer envelope containing regular mail absentee ballots, the Secretary of the County Election Board shall lock a ballot box of the type described in 230:30-7-8(b) and shall give one key each to the Chairman and Vice Chairman of the County Election Board. The keys may be mailed to the Chairman and Vice Chairman if necessary. The Secretary shall retain the third key.

(b) The date on which the outer envelope is received shall be entered in the voter's application information in OEMS. The outer envelope then shall be placed in the locked absentee ballot box, which shall be retained in the County Election Board office. All subsequently returned absentee ballots shall be handled in the same manner.

**230:30-11-2. Opening outer envelopes and examining affidavits**

The County Election Board may meet any time after 10 a.m. on the Saturday preceding the election to remove outer envelopes. [26:14-123] Unless the number of absentee ballots is extremely high, this meeting shall be scheduled on the day of the election. Upon meeting, the Board shall unlock each ballot box containing absentee ballots. Each envelope shall be removed from the ballot box. The outer envelopes shall be opened and removed and the affidavit envelopes examined. If an inactive voter has enclosed the Oklahoma Voter Registration Application form inside the outer envelope, set the application aside to be processed later. The examination shall determine whether or not the affidavit is properly executed. The following requirements shall be observed:

(1) The signature on a pink affidavit submitted by a physically incapacitated voter, a voter charged with the care of a physically incapacitated person or an emergency incapacitated voter must be witnessed by two other persons. [26:14-113.2]

(A) No one may witness signatures on more than five of these pink affidavits per election. [26:14-113.2(B)]

(B) If someone witnesses signatures on more than five of these pink affidavits, the absentee ballots shall be counted but the witness shall be reported to the District Attorney. See 230:30-23-1.

(2) The signature on a yellow affidavit submitted by an absentee voter must be witnessed by a Notary Public. [26:14-108] Affidavits from states other than Oklahoma may be notarized by a person other than a Notary Public who is authorized to administer oaths.

(A) The Notary Public must sign and impress the notarial seal on the affidavit for the attestation to be valid.

(B) The number and expiration date of a Notary Public in Oklahoma should be included in the attestation. However, the attestation shall be considered valid even if this information is missing.

(3) The signature on a pink affidavit submitted by a nursing home voter must be witnessed by two members of the nursing home Absentee Voting Board, who shall not be required to show their addresses. [26:14-115]

(4) Voters using the red and white affidavit need not have their signatures witnessed.

(5) The outer (mailing) envelope of a federal write-in absentee ballot shall not be opened at this time. The voter's declaration/affirmation on the mailing envelope shall be examined. The voter's signature need not be witnessed.

**230:30-11-3. Opening and storing properly executed affidavits**

(a) If the County Election Board meets prior to election day to open outer envelopes as outlined in 230:30-11-2, it is permissible for the Board members also to open and remove affidavit envelopes that are determined to be executed properly. Upon removing the affidavits, the Board members shall place the ballot envelopes in a ballot box of the type described in 230:30-7-8(b) and shall lock the box. If an inactive voter enclosed the Oklahoma Voter Registration Application form inside the affidavit envelope, set the application aside to be processed later. Additionally, the Board members shall affix a long white State Election Board seal across the opening on the top of the box so that the opening is entirely obstructed. The County Election Board members each shall sign and date the seal. Each member of the County Election Board shall retain the key to only one of the locks on the ballot box. The Secretary shall store the ballot box in a secure place until it is time to count the absentee ballots on election day. The affidavits shall be set aside in a secure place and shall be retained as outlined in 230:30-21-4.

(b) The procedure for opening and removing affidavit envelopes described in (a) of this Section shall be observed only in the event that an extraordinarily large number of absentee ballots has been received.

(c) In the event that one person witnesses signatures of more than five physically incapacitated voters on pink affidavits as outlined in 230:30-11-2(1), separate the affidavits signed by that witness from other properly executed affidavits, but place the ballot envelopes they contain with all other ballot envelopes to be opened and counted. See 230:30-23-1.

**230:30-11-6. Transmitting absentee ballots**

(a) **Transmitting absentee ballots to voter.** The County Election Board shall transmit absentee ballots to all absentee voters - except nursing home absentee voters, in-person absentee voters, and emergency incapacitated absentee voters - by United States mail. [26:14-106; 26:14-111.1; 26:14-118] Absentee ballots for nursing home absentee voters shall be delivered to the voters in person by the nursing home Absentee Voting Board as outlined in 230:30-7-9. [26:14-115] Absentee ballots for in-person absentee voters shall be issued to the

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voter by the in-person Absentee Voting Board at the in-person absentee polling place as outlined in 230:30-7-11. [26:14-115] Absentee ballots for emergency incapacitated absentee voters shall be delivered to the voter by the voter's agent as outlined in 230:30-9-6. [26:15-115.1]

(b) **Transmitting voted absentee ballots from voter to the County Election Board.** All absentee voters - except nursing home absentee voters, in-person absentee voters, and emergency incapacitated absentee voters - shall transmit their voted absentee ballots back to the County Election Board by United States mail. [26:14-108; 26:14-113.2; 26:14-120] Express delivery service provided by the United States Postal Service (Express Mail™) is considered United States mail. Voted absentee ballots from nursing home absentee voters shall be delivered to the County Election Board office by the nursing home Absentee Voting Board as outlined in 230:30-7-9. [26:14-115] Voted absentee ballots from in-person absentee voters shall be deposited by the voter directly into the appropriate voting device as outlined in 230:30-7-11. [26:14-115.4] Voted absentee ballots from emergency incapacitated absentee voters are delivered to the County Election Board by the voter's agent as outlined in 230:30-9-6. [26:14-115.1]

(c) ~~Absentee ballots received via a courier service or an express delivery may be returned by a private mail service (such as Federal Express™) shall be rejected that provides delivery documentation. Such delivery services are not United States mail. The decision to use such a private mail service to return voted absentee ballots, as well as the expense of such service, shall be the voter's.~~

### 230:30-11-7. Undeliverable absentee ballots returned by postal service to County Election Board

(a) In the event that absentee ballots mailed to a voter are returned to the County Election Board by the postal service because they are undeliverable as addressed, County Election Board personnel shall note on the envelope the date the undeliverable ballots were received and shall set them aside in a secure place. Such returned undeliverable absentee ballots shall be retained for 24 months with other absentee voting materials for the election. No entry concerning the undelivered ballots shall be made in the voter's absentee application in OEMS. Do not mail the ballots to another address unless it is provided in writing by the voter in the form of a new application for absentee ballots. If the voter's application includes additional upcoming elections, the application shall be considered cancelled and shall be deleted from OEMS. See 230:30-5-8.2.

(b) When the postal service returns undeliverable absentee ballots to the County Election Board, the Secretary is not required to try to contact the voter to obtain a new or a corrected mailing address. The Secretary may choose to do so, however, if there is sufficient time for such communication before the election, or if the voter has applied for absentee ballots for additional upcoming elections. If the Secretary chooses to contact the voter, the following guidelines should be observed. See (c) of this Section for the suggested contents of a letter to the voter.

(1) If the postal service has provided a forwarding address on the returned mailing envelope, mail a letter to the voter at that address

(2) If the ballots were not mailed to the voter's residence address, mail a letter to the voter at the residence address or to the mailing address provided on the voter's voter registration application.

(3) If the ballots were mailed to a military or overseas voter and were returned with a forwarding address, mail a letter to the voter at that address.

(c) Prepare a letter to the voter explaining that the absentee ballots could not be delivered to the voter by the postal service at the address provided on the absentee ballot application form and that ballots cannot be mailed again to that address. Enclose a new application form and ask the voter to fill it out with a new or a corrected mailing address and to return it. Include the deadline for absentee ballot applications for the affected election, or for the next election covered by the original application.

(d) If a voter whose absentee ballots were returned undelivered by the postal service contacts the County Election Board to inquire about the ballots, follow the procedures outlined in 230:30-17-1 through 230:30-17-4 to replace the ballots.

## SUBCHAPTER 17. REPLACEMENT OF LOST OR UNDELIVERED ABSENTEE BALLOT

### **230:30-17-1. Replacement of lost or undelivered absentee ballots**

Absentee voters who lose or do not receive the absentee ballots mailed to them by the County Election Board may apply for a second set of absentee ballots to replace the original set. [26:14-121.1] ~~An application for a second set of replacement~~ absentee ballots cannot be made earlier than seven days after the ballots were mailed by the County Election Board. [26:14-121.1]

### **230:30-17-2. Applications for second set of replacement absentee ballots**

(a) ~~If more than seven days have passed since the absentee ballots were mailed by the County Election Board, the voter may apply for a second set of absentee ballots by making a written request. An application for replacement absentee ballots must be made in writing. [26:14-121.1] The voter shall is required to swear or affirm that the first set of absentee ballots were either was received but subsequently lost by the voter or were that it was not received and that only one set of absentee ballots will be voted the voter will vote and return only one set of absentee ballots. [26:14-121.1] The voter shall personally sign the written request and the voter's signature shall be acknowledged by a Notary Public in the same manner as required on the affidavit envelope that accompanies the voter's ballots. [26:14-121.1]~~

(1) If the voter receives a yellow affidavit envelope, the voter's signature must be notarized.

(2) If the voter receives a pink affidavit envelope, the voter's signature must be witnessed by two persons whose names and addresses must be included on the application.

(3) If the voter receives a red and white affidavit envelope, the voter's own signature is sufficient.

(b) ~~The voter may use the Application for Second Set of Replacement Absentee Ballots form, but use of the form is not required. [26:14-121.1] A letter setting forth the same facts shall be a sufficient application, provided that it is signed by the voter and acknowledged by a Notary Public shall be a sufficient application in the same manner as required on the affidavit envelope that accompanies the voter's ballots. [26:14-121.1] See (a) of this Section. The application for a second set of replacement absentee ballots may be transmitted to the County Election Board in person by the voter, by United States mail or by an agent designated by the voter. [26:14-121.1]~~

**230:30-17-3. Voter's agent**

A voter who applies for ~~a second set of replacement~~ absentee ballots may designate an agent to transmit the application to the County Election Board. [26:14-121.1] This agent may be anyone of the voter's choosing who is at least 16 years of age, provided that the agent is not employed by nor related within the third degree of consanguinity or affinity to any person whose name appears on the ballot. [26:14-121.1] No person may be an agent for more than one voter at any election. [26:14-121.1]

**230:30-17-4. Transmittal of ~~second set of replacement~~ absentee ballots**

The ~~second set of replacement~~ absentee ballots shall be transmitted to the voter in the same manner as was the original set of absentee ballots. The voter shall return the voted ~~second set of replacement~~ ballots to the County Election Board in the same manner as required for the original set of absentee ballots. [26:14-121.1]

**SUBCHAPTER 23. SUSPECTED VIOLATIONS OF ABSENTEE VOTING LAWS**

**230:30-23-1. Suspicious activities**

(a) **Large number of requests.** Typically, absentee voting accounts for about 1.5 percent of the votes cast in an election. The Secretary of the County Election Board shall monitor requests for absentee ballots and shall compare the level of requests with previous elections of a similar nature in his county. In the event there appears to be an unusually large number of requests, the Secretary shall notify the proper authorities.

(b) **Requests for same address.** If there appears to be an unusual number of requests for absentee ballots to be mailed to a single address, the Secretary of the County Election Board shall notify the proper authorities.

(c) **Unusual notarization.** If it appears that a single Notary Public is witnessing a large number of absentee ballot affidavits, the Secretary shall notify the proper authorities.

(d) **Improper witnessing.** If one person witnesses the signatures of more than five physically incapacitated voters, voters charged with the care of physically incapacitated persons, or emergency incapacitated voters, the Secretary shall notify the proper authorities. The absentee ballots shall be counted, however.

(e) **Other suspicious activities.** If there are any suspicious activities, or extraordinary activities, concerning absentee voting, the Secretary shall notify the proper authorities.

[OAR Docket #03-679; filed 4-21-03]

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

[OAR Docket #03-680]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. County Election Board Responsibilities

Part 17. Disposition of Materials

230:35-3-101. Processing Forms for use by Precinct Officials booklets [AMENDED]

Subchapter 5. Instructions for Precinct Election Officials

Part 21. Problems with Eligibility

230:35-5-111. Voter whose name is not in Precinct Registry — Challenged Voter Procedure [AMENDED]

230:35-5-114. Military ~~discharge or military leave or Overseas Voter~~ [AMENDED]

Part 25. Special Services

230:35-5-129. Cancellation of registration of deceased voter [AMENDED]

**AUTHORITY:**

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

**DATES:**

**Comment period:**

January 2, 2003, through February 3, 2003

**Public hearing:**

February 3, 2003

**Adoption:**

February 19, 2003

**Submitted to Governor:**

February 19, 2003

**Submitted to House:**

February 19, 2003

**Submitted to Senate:**

February 19, 2003

**Gubernatorial approval:**

March 24, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2003

**Final adoption:**

April 15, 2003

**Effective:**

July 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 3. County Election Board Responsibilities

Part 17. Disposition of Materials

230:35-3-101. Processing FORMS FOR USE BY PRECINCT OFFICIALS booklets [AMENDED]

Subchapter 5. Instructions for Precinct Election Officials

Part 21. Problems with Eligibility

230:35-5-111. Voter whose name is not in Precinct Registry — Challenged Voter Procedure [AMENDED]

230:35-5-114. Military ~~discharge or military leave or Overseas Voter~~ [AMENDED]

# Permanent Final Adoptions

Part 25. Special Services  
230:35-5-129. Cancellation of registration of deceased voter  
[AMENDED]

**Gubernatorial approval:**

January 2, 2003

**Register Publication:**

20 Ok Reg 485

**Docket number:**

#03-75

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

Some amendments in Subchapter 3 change the name of a form used by Precinct Officials on election day. The form has a new title but is unchanged in content and purpose. Other amendments concern distribution of election supplies to Precinct Inspectors prior to election day.

Most precinct boundary lines changed radically following redistricting in 2001. As part of the process of drawing new precinct lines, several County Election Board Secretaries chose to renumber every precinct, with the result that precinct numbers on old voter identification cards are no longer valid. Unfortunately, many voters may not have received the new voter identification cards showing their new precinct numbers and polling places.

An amendment in Subchapter 5 clarifies a procedure for assisting voters whose names do not appear in the Precinct Registry. By law, a voter may vote if he or she presents the Precinct Judge with a voter identification card showing the voter to be a registered voter in the precinct. In the past, that was determined based on the precinct number. However, especially in counties that renumbered all precincts following redistricting, the precinct number alone may not help the many voters who appear at the wrong polling place. The procedure is revised to provide that any voter whose voter identification card shows a residence address located within the current boundaries of the precinct may vote. Instructions also are included for directing a voter who does not reside in the current precinct to the correct precinct polling place. This amended procedure was developed in consultation with several County Election Board Secretaries during the 2002 statewide election season.

Other amendments in Subchapter 5 concern the new provision allowing the spouse or dependent of a military voter who has been recently discharged or who is home on leave or an overseas voter who has recently returned home to cast in-person absentee ballots. References to the name of a form used by such voters also is changed. A section also is amended to provide that the next of kin of a deceased voter may complete a form to cancel the deceased voter's registration at the next of kin's polling place on election day. In the past, this action could be taken only at the deceased voter's polling place.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

## SUBCHAPTER 3. COUNTY ELECTION BOARD RESPONSIBILITIES

### PART 17. DISPOSITION OF MATERIALS

**230:35-3-101. Processing FORMS FOR USE BY PRECINCT OFFICIALS booklets**

(a) The Secretary shall remove the FORMS FOR USE BY PRECINCT OFFICIALS booklet and all used Oklahoma Voter Registration Applications from the election supply container from each precinct. Examine the FORMS booklet, tear out all used forms and process them according to the following procedure.

(1) The Secretary shall examine the Challenged Voter Affidavit and shall verify that a completed Oklahoma Voter Registration Application form with an old voter identification card attached has been returned by every voter who signed the affidavit. These voter registration applications shall be processed as new applications or as transfers on election day as appropriate. See 230:15-9-18 and 230:15-9-24. The surrendered voter identification card shall be retained for 24 months in the Cancellation File. See 230:10-7-40.

(2) The Secretary shall cancel the registrations of deceased voters indicated by used Cancellation of Registration of Deceased Voter forms as outlined in 230:15-5-63 and 230:15-5-65.

(3) The Secretary shall read the Inspector's Notes to Secretary sheets and shall take any necessary action.

(4) The Secretary shall examine the Absentee Voter Affidavit. If OEMS identifies voters who voted both by absentee ballot and in person, the Secretary shall notify both the District Attorney and the State Election Board. The Secretary shall follow any instructions concerning the Absentee Voter Affidavit given by either the District Attorney or the State Election Board.

(5) The Secretary shall examine the ~~Military Discharge~~ /Overseas Affidavit and shall verify that persons who signed it also completed a voter registration application form. These applications shall be processed as new applications. See 230:15-9-18. If a voter signed the ~~Military Discharge~~ /Overseas Affidavit and voted but did not return a completed voter registration application form to Precinct Officials, the Secretary shall mail an application form to the voter.

(6) The Secretary shall examine the Valid Application Affidavit and shall verify that the processing of voter registration applications from persons who signed the affidavit is completed as outlined in 230:15-9-12, 230:15-9-18 and 230:15-9-19.

(b) All remaining voter registration application forms shall be processed as transfers on election day. See 230:35-3-101.1 and 230:15-9-24.

(c) After the used forms have been processed as outlined in (a) of this Section they shall be retained for 24 months following the date of the election. The booklet covers and any unused forms remaining inside the covers shall be retained for 30 days following the election and then shall be destroyed.

## SUBCHAPTER 5. INSTRUCTIONS FOR PRECINCT ELECTION OFFICIALS

### PART 21. PROBLEMS WITH ELIGIBILITY

**230:35-5-111. Voter whose name is not in Precinct Registry - Challenged Voter Procedure**

(a) A person not listed in the Precinct Registry may vote if he or she has a voter identification card for an address located within the current boundaries of the precinct. When a person's

name is not in the Precinct Registry, the Judge follows this procedure.

- (1) Ask to see the person's voter identification card.
- (2) Show the voter the precinct map and tell the voter to locate the residence address printed on the voter identification card on the map.

(A) ~~If the person does not have a residence address on the voter identification card for is not located within the current geographical boundaries of this precinct, the person may not vote. For one exception, see 230:35-5-111.1. If information provided by the County Election Board indicates the voter's correct polling place, refer the voter to that location. If not, tell the voter to contact the County Election Board office for more information.~~

(B) ~~If the person has a residence address on the voter identification card for is located within the current geographical boundaries of this precinct, the person may vote only after surrendering the card to the Judge, filling out an Oklahoma Voter Registration Application form, and signing the Challenged Voter Affidavit the actions outlined in paragraphs 3 through 7 of this subsection are completed.~~

(C) If the person does not have a voter identification card because the voter recently applied for voter registration and has not received a card, see 230:35-5-111.1.

- (23) Give the voter an Oklahoma Voter Registration Application form.
- (34) Ask the voter to fill out and sign the application.
- (45) Print the voter's name, address, telephone number, political affiliation and the ballots to be issued on the Challenged Voter Affidavit and sign it in the space for the Judge's signature.
- (56) Tell the voter to read the oath printed on the Challenged Voter Affidavit and to sign the affidavit.
- (67) Attach the voter's old voter identification card to the Oklahoma Voter Registration Application form with a paper clip and ~~returns return~~ to the routine procedure.

(b) If a person not listed in the Precinct Registry has a voter identification card ~~for the~~ with an address located within the current boundaries of this precinct but refuses to fill out an Oklahoma Voter Registration Application form, refuses to surrender the voter identification card, and/or refuses to sign the Challenged Voter Affidavit form, the person may not vote. If the person has a voter identification card but ~~it is not for the address on the card is not located within the current boundaries of this precinct,~~ the person may not vote. Refer such persons to the Secretary of the County Election Board if they have questions.

**230:35-5-114. Military discharge or military leave or Overseas Voter**

(a) Some persons may be entitled to vote without being registered if they are eligible to become registered voters, if they are residents of the precinct, and if they also meet one of the following requirements.

- (1) The person was honorably discharged from the Armed Forces of the United States and has returned home 24 days or less before the election.
- (2) The person is on officially authorized leave from the Armed Forces of the United States and has returned home 24 days or less before the election.
- (3) The person was terminated in his or her service or employment overseas and returned home 24 days or less before the election.
- (4) The person is the spouse or dependent of a person described in (1), (2) or (3) of this subsection.

- (b) The Inspector follows this procedure.
  - (1) Ask the voter to fill out and sign the Oklahoma Voter Registration Application form.
  - (2) Print the voter's name, address, political affiliation and the ballots to be issued to the voter in the appropriate spaces on the ~~Military-Discharge-/Overseas~~ Affidavit.
  - (3) Tell the person to read the oath printed on the ~~Military-Discharge-/Overseas~~ Affidavit.
  - (4) Tell the voter to sign the ~~Military-Discharge-/Overseas~~ Affidavit.
  - (5) Tell the Clerk the voter's political affiliation.
  - (6) Return to the routine procedure.

(c) Voters who sign the ~~Military-Discharge-/Overseas~~ Affidavit swear this oath. "Do you swear or affirm that you have been honorably discharged, or that you are on leave from the Armed Forces of the United States, or that you have been terminated in your service or employment overseas and returned home 24 days or less before the election being conducted today, or that you are the spouse or dependent of such a person? [25:14-121] Do you swear or affirm that you are eligible to vote in this precinct? [26:14-121] Do you swear or affirm that you have filled out and signed an Oklahoma Voter Registration Application form? [26:14-121] Do you swear or affirm that you have not voted by absentee ballot in the election being conducted today?"

**PART 25. SPECIAL SERVICES**

**230:35-5-129. Cancellation of registration of deceased voter**

~~If a deceased voter's name is in the Precinct Registry, the person's~~ The next of kin of a deceased voter may cancel the deceased voter's registration at the polling place on election day. [26:4-120.3] The decision to cancel ~~the~~ such a registration belongs to the next of kin. The Inspector follows this procedure if the next of kin chooses to cancel the registration.

- (1) Print the following information on the green Cancellation of Registration of Deceased Voter form.
  - (A) Precinct number.
  - (B) Today's date.
  - (C) The deceased voter's name, residence address, and birth date.
- (2) Ask the next of kin to read the Cancellation of Registration of Deceased Voter form and to sign it if all the information is correct.

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(3) Sign the form, indicate your title, and date the form.

[OAR Docket #03-680; filed 4-21-03]

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

[OAR Docket #03-681]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
230:40-1-2. Definitions [NEW]  
Subchapter 3. Special Elections  
Part 3. Vacancies  
230:40-3-10. Vacancies in other county offices [AMENDED]  
230:40-3-11. Irrevocable resignation of incumbent [NEW]  
Subchapter 7. School Elections  
Part 1. Dates for Annual School Election  
230:40-7-1. Annual School Elections [AMENDED]  
230:40-7-3. Resolution required [AMENDED]  
Part 7. Ballot Printing  
230:40-7-26. Materials and ballots [AMENDED]  
230:40-7-27. County Purchasing Agent obtains bids [REVOKED]  
Part 9. Procedures  
230:40-7-34. General laws apply [AMENDED]  
230:40-7-35. ~~Polling places~~ Precincts in school elections [AMENDED]  
230:40-7-35.1. Procedure for closing split precinct in which 100 or fewer voters are registered in school district or technology center district [NEW]  
230:40-7-37. Precinct Registries [AMENDED]  
230:40-7-39. Absentee voting [AMENDED]  
230:40-7-40. Forms provided by the County Election Board [AMENDED]  
Part 11. Special Elections  
230:40-7-47. Notice of special election [AMENDED]  
230:40-7-50. Closing precincts in special elections [REVOKED]  
230:40-7-50.1. Notification letter [REVOKED]  
230:40-7-50.2. County Election Board responsibilities for closed precincts [REVOKED]  
230:40-7-50.3. Voting alternatives for voters in closed precincts [REVOKED]  
230:40-7-51. Combining precincts in school elections [REVOKED]  
230:40-7-51.1. Conditions that prohibit or limit combination of precincts [REVOKED]  
230:40-7-51.2. Responsibilities of the school district superintendent [REVOKED]  
230:40-7-51.3. Responsibilities of the County Election Board [REVOKED]  
Part 13. Expenses  
230:40-7-56.1. Expenses for combined precincts [REVOKED]  
Part 23. Multi-County School Districts  
230:40-7-97. Multi-county school districts [AMENDED]

### AUTHORITY:

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

### DATES:

#### Comment period:

January 2, 2003, through February 3, 2003

#### Public hearing:

February 3, 2003

#### Adoption:

February 19, 2003

#### Submitted to Governor:

February 19, 2003

#### Submitted to House:

February 19, 2003

#### Submitted to Senate:

February 19, 2003 Gubernatorial approval:  
March 24, 2003

### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2003

### Final adoption:

April 15, 2003

### Effective:

July 1, 2003

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. General Provisions  
230:40-1-2. Definitions [NEW]  
Subchapter 3. Special Elections  
Part 3. Vacancies  
230:40-3-10. Vacancies in other county offices [AMENDED]  
230:40-3-11. Irrevocable resignation of incumbent [NEW]  
Subchapter 7. School Elections  
Part 1. Dates for Annual School Election  
230:40-7-1. Annual School Elections [AMENDED]  
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230:40-7-37. Precinct Registries [AMENDED]  
230:40-7-39. Absentee voting [AMENDED]  
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Part 11. Special Elections  
230:40-7-47. Notice of special election [AMENDED]  
230:40-7-50. Closing precincts in special elections [REVOKED]  
230:40-7-50.1. Notification letter [REVOKED]  
230:40-7-50.2. County Election Board responsibilities for closed precincts [REVOKED]  
230:40-7-50.3. Voting alternatives for voters in closed precincts [REVOKED]  
230:40-7-51. Combining precincts in school elections [REVOKED]  
230:40-7-51.1. Conditions that prohibit or limit combination of precincts [REVOKED]  
230:40-7-51.2. Responsibilities of the school district superintendent [REVOKED]  
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Part 13. Expenses  
230:40-7-56.1. Expenses for combined precincts [REVOKED]  
Part 23. Multi-County School Districts  
230:40-7-97. Multi-county school districts [AMENDED]

### Gubernatorial approval:

January 2, 2003

### Register Publication:

20 Ok Reg 487

### Docket number:

#03-76

### INCORPORATION BY REFERENCE:

n/a

### ANALYSIS:

A new Definitions Section in Subchapter 1 defines the term "split precinct." In Subchapter 3, one amendment changes the specified county population level from 550,000 to 600,000 in accordance with the amendment to 26:12-111. A new Section describes the irrevocable resignation procedure created by SB826 in 26:12-119.

Senate Bill 1350 included an amendment to 26:13A-101 that removed language allowing school districts to combine precincts in some circumstances. New language was added in this section that allows school districts to close split precincts in which no one lives in the part of the precinct located within the district's boundary and that instructs the Secretary of the State Election Board to promulgate rules to allow school districts to close split precincts in which 100 or fewer voters are registered at addresses located in the part of the precinct that lies within the district.

In Subchapter 7, amendments in several sections create a procedure for closing split precincts in school elections. Several Sections concerning closing precincts and combining precincts in school elections are revoked because they

no longer comply with 26:13A-101 as amended by SB1350. Additionally, amendments in several Sections replace the term "vocational-technical school district" or "vo-tech" with the new term "technology center school district" or "technology center."

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**230:40-1-2. Definitions**

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

"Split precinct" means a precinct that includes portions of territory of two or more school or technology center districts or two or more municipalities.

**SUBCHAPTER 3. SPECIAL ELECTIONS**

**PART 3. VACANCIES**

**230:40-3-10. Vacancies in other county offices**

(a) In the event a vacancy occurs for any county office other than for County Commissioner in any county having a population of less than 550,000, 600,000, according to the latest Federal Decennial Census, the vacancy shall be filled as follows:

(1) If a vacancy occurs prior to the filing period for regular county elections and the vacated office is not scheduled to be on the ballot at that election, the vacancy shall be filled at a Special Election proclaimed by the County Commissioners. [51:10(b)] The filing period and the election dates contained in the proclamation shall be the same as for the regular county Primary, Runoff Primary and General Elections. [51:10(b)] At the time they call the elections, the Commissioners also shall appoint someone to hold the office until the Special Election. [51:10(b)]

(2) If a vacancy occurs in an office that is scheduled to be on the ballot at the next regular county election, the Commissioners shall fill the vacancy by appointment for the unexpired term, and no Special Election shall be held.

(b) In a county having a population of more than 550,000, 600,000, according to the latest Federal Decennial Census, a vacancy in any elective county office shall be filled by special election in the same manner as a vacancy in the office of County Commissioner. See 230:40-3-9.

**230:40-3-11. Irrevocable resignation of incumbent**

(a) An incumbent United States Senator, United States Representative, State Senator, State Representative, or County Commissioner may file an irrevocable resignation that will not become effective immediately but on a specified date in the future. An irrevocable resignation must be made in writing and filed with the Oklahoma Secretary of State. The Governor is authorized to proceed as if the office already were vacant and to call a special election to fill the vacancy. The special election shall be held as required by law for the office to be filled. (See 230:40-3-7 through 230:40-3-10.) The person elected at the special election shall take office on the date the election is certified or on the date the irrevocable resignation becomes effective, whichever is later.

(b) An incumbent in any elective county office in any county with a population of more than 600,000, according to the most recent federal decennial census, may file an irrevocable resignation as outlined in (a) of this section. See 230:40-3-10(b).

**SUBCHAPTER 7. SCHOOL ELECTIONS**

**PART 1. DATES FOR ANNUAL SCHOOL ELECTION**

**230:40-7-1. Annual School Elections**

Annual School District and ~~Vocational-Technical~~ Technology Center School District Elections shall be held on the second Tuesday in February of each year. [26:13A-103(A)]

**230:40-7-3. Resolution required**

(a) ~~Resolutions~~ A resolution from the Board of Education of a school district or a technology center school district calling for the Annual School Elections shall be delivered to the Secretary of the County Election Board no fewer than 15 days preceding the first day of the filing period shall be delivered to the County Election Board Secretary no fewer than 15 days before the first day of the candidate filing period established by law. [26:13A-109(C)] The resolution for the Annual School Election also shall include the date of the call for an Annual School Runoff Election to be held if needed under the circumstances set forth by law.

(b) A resolution from the Board of Education of a school or technology center district calling for a special election shall be delivered to the County Election Board Secretary no fewer than 60 days preceding the election no fewer than 60 days before the special election date. [26:13A-109(D)]

(c) ~~The~~ A resolution from the Board of Education of a school or technology center district shall include, but shall not be limited to, the following items of information: [26:13A-109(B)]

(1) ~~Date or dates of the election or elections~~ The date of the election. [26:13A-109(B)] The resolution for the district's Annual School Election must also include the date of the Annual School Runoff Election.

(2) ~~The office or offices to be filled.~~ The office or offices, identified by number, to be filled. [26:13A-109(B)]

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- (3) Qualifications of candidates for office. The qualifications of candidates for office. [26:13A-109(B)]
- (4) Length of term of office. The length of the term of each office to be filled. [26:13A-109(B)]
- (5) Description of election districts within the school district, if applicable. Descriptions of the election districts within the school district, if applicable; or, in the case of a technology center district, descriptions of the zones within the district. [26:13A-109(B)]
- (6) Ballot titles of all questions to be voted upon, if applicable. [26:13A-109(B)]
- (7) Description of persons eligible to vote in the election. Information identifying the persons eligible to vote in the election. [26:13A-109(B)]
- (8) Certification to close split precincts in which no one lives in the district for this election, if applicable. [26:13A-101]
- (9) All other information necessary for conducting the election. All other information required to conduct the election or elections. [26:13A-109(B)]

## PART 7. BALLOT PRINTING

### 230:40-7-26. Materials and ballots

All materials and ballots necessary to conduct any school district or ~~vocational technical school~~ technology center district election shall be provided by the County Election Board and shall be the same, as nearly as possible, as those used for state and county elections.

### 230:40-7-27. County Purchasing Agent obtains bids [REVOKED]

~~The Secretary shall notify the County Purchasing Agent to obtain bids for printing all regular ballots, absentee ballots and sample ballots for all school districts, including those school districts for which the county is an affected county. The Secretary shall follow the procedures for ballot printing contained in Chapter 25 of this Title.~~

## PART 9. PROCEDURES

### 230:40-7-34. General laws apply

The laws governing state and county Primary and General Elections shall be applicable to all school district and ~~vocational technical school~~ technology center district elections, except as otherwise provided by law.

### 230:40-7-35. Polling places Precincts in school elections

(a) Precincts in school and technology center district elections. The regular polling places of all ~~All~~ precincts totally or partially contained within the geographical boundaries of a school district or a technology center district shall be open for all ~~Annual School Elections~~ elections held by the school district except as provided in ~~230:40-7-51~~. In special

elections, polling places may be closed under the specific conditions outlined in 230:40-7-50 or 230:40-7-51 (b) or (c) of this section.

(b) Closing a split precinct in which no one lives in the district. A school district or technology center district may close a split precinct by certifying in the resolution that no one resides in the part of the precinct located within the district's boundaries. [26:13A-101(B)] Prior to preparing the resolution, district officials should contact the Secretary of the County Election Board to verify that no registered voters in the precinct are assigned by OEMS to the district and that no voters who are unassigned to a school district in the precinct are believed to be located within the district's boundary. In addition, before including the certification required to close the precinct in the resolution, a district official should visit the area in question to verify that no one resides there. When a split precinct is closed as provided in this subsection, the precinct shall not be included in the district's election; the district shall incur no expenses related to the precinct polling place; neither regular nor absentee ballots shall be printed for the precinct; and the services of neither the nursing home or in-person Absentee Voting Board shall be required by the district for the precinct.

(c) Closing a split precinct with 100 or fewer voters. A school district or technology center school district may close a split precinct in which there are 100 or fewer registered voters in the district only under the circumstances outlined in 230:40-7-35.1 and by following the procedure outlined in that Section. [26:13A-101(C)] When a split precinct is closed as outlined in 230:40-7-35.1, the district shall not incur any costs or share in Precinct Official compensation, Precinct Registry fees, or polling place rent for the precinct for the election. Regular ballots shall not be printed. However, absentee ballots shall be printed and the services of the in-person Absentee Voting Board and a nursing home Absentee Voting Board, if necessary, shall be required.

(d) Closing a split precinct in an affected county. If the split precinct to be closed as outlined in (b) of this section is located in an affected county, the Secretary of the parent County Election Board shall notify the Secretary of the affected County Election Board that the precinct will be closed for the election. If the split precinct to be closed as outlined in (c) of this section and in 230:40-7-35.1 is located in an affected county, the request to close the precinct shall be submitted to the Secretary of the parent County Election Board with the resolution calling the election. The parent county Secretary immediately shall forward the request to the Secretary of the affected County Election Board. The Secretary of the affected County Election Board shall follow the procedure outlined in 230:40-7-35.1 and shall notify both the district officials and the parent County Election Board Secretary of the approval or denial of the request.

### 230:40-7-35.1. Procedure for closing split precinct in which 100 or fewer voters are registered in school district or technology center district

(a) A request to close a split precinct with 100 or fewer voters registered in the school district or technology center district

shall be made in writing and shall be submitted to the Secretary of the parent County Election Board with the resolution calling the election. A request to close such a split precinct in the Annual School Election shall be submitted no later than 15 days before the candidate filing period for Board of Education candidates. A request to close such a split precinct in the Annual School Runoff Election shall be submitted no later than 45 days prior to the election. A request to close such a split precinct in a special election shall be submitted no later than 60 days before the special election date. District officials may use a form prescribed by the Secretary of the State Election Board to make the request but use of the form is not required. A letter containing substantially the same information shall be sufficient.

(b) Upon receiving a request to close a split precinct in which 100 or fewer voters are registered at addresses within the district's boundaries, the Secretary of the County Election Board shall follow these steps to approve or disapprove the request.

(1) Determine the number of registered voters in the precinct who are assigned in OEMS to this school or technology center district.

(A) If more than 100 voters already are assigned to the district, the precinct cannot be closed. Notify the district superintendent that the request cannot be approved for this reason.

(B) If fewer than 100 voters are assigned to the district, proceed to the next step.

(2) Determine whether the voters in the district are eligible to vote in any other election being held on the same date.

(A) If voters in the district are eligible to vote in another election on the same date, the request to close the split precinct shall be denied.

(B) If voters in the district are not eligible to vote in another election on the same date, proceed to the next step.

(3) Send a copy of the Registered Voter Mailing List or of a Precinct Registry for the precinct and a copy of the precinct map showing the district's boundary to the district superintendent.

(4) The superintendent shall be required to examine the residence addresses of voters in the precinct who are not assigned to a school district. The superintendent shall mark the list to indicate which voters, if any, are believed to be registered at addresses located within the boundaries of the district. The superintendent shall return the marked list to the Secretary of the County Election Board within five business days.

(5) Upon receiving the list of unassigned voters back from the superintendent, the Secretary shall count the voters marked by the superintendent. Add the number of voters marked on the list to the number of voters assigned to the school district by OEMS.

(A) If the total number is 100 or less, the precinct may be closed for the election.

(B) If the total number is more than 100, the request must be denied and the precinct must remain open for the election.

(C) Even if the number is 100 or less, the precinct must remain open if voters in the district are eligible to vote in another election in the precinct on the same date.

(6) The Secretary shall notify district officials whether the precinct will be closed or must remain open.

(7) The Secretary shall prepare and mail to each voter identified in the district a notice that the precinct will be closed for the election. A yellow application for absentee ballots shall be enclosed with the notice, as well as information about in-person absentee voting for the election. These notices shall be mailed to voters not less than 30 days prior to the election.

(8) The Secretary shall monitor voter registration activity in the precinct. If a new voter is assigned by OEMS to the school or technology center district in the split precinct, the Secretary shall mail the notice and information described in (8) of this subsection to the new voter immediately.

**230:40-7-37. Precinct Registries**

Precinct Registries shall be used in all school district and ~~vocational technical school~~ technology center district elections. A Precinct Registry fee shall be charged as outlined in 230:35-3-57.1.

**230:40-7-39. Absentee voting**

Absentee voting shall be available in all school district and ~~vocational technical school~~ technology center district elections. The procedures for absentee voting shall be the same as for all other elections. Applications for absentee ballots shall be processed and the ballots shall be issued by the Secretary of the County Election Board in the county wherein the voter is registered. See 230:30.

**230:40-7-40. Forms provided by the County Election Board**

All forms used in school district and ~~vocational technical school~~ technology center district elections shall be provided by the County Election Board.

**PART 11. SPECIAL ELECTIONS**

**230:40-7-47. Notice of special election**

(a) A special election may be called by the Board of Education. The Board of Education shall notify the County Election Board of the election by delivering a resolution to the Secretary not fewer than 60 days preceding the election. [26:13A-109(D)] The resolution shall contain the information necessary for the County Election Board to conduct the election, as outlined in 230:40-7-3.

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(b) The Board of Education of a school district or a vocational-technical school district may call a special election to be held on the date of the Annual School Runoff Election by delivering a resolution to the Secretary of the County Election Board not fewer than 45 days preceding the election. [26:12-116]

### **230:40-7-50. Closing precincts in special elections [REVOKED]**

(a) The polling places in precincts in which fewer than 200 voters are registered within the boundaries of a school district may be closed during special school elections if the school district is the only entity holding an election in the precinct on the date of the special election.

(b) The following procedure shall be observed to close a precinct polling place in a special election:

(1) The superintendent shall notify the County Election Board of the intention to close a precinct in writing. The written notification shall be submitted at the same time the resolution calling the special election is submitted to the County Election Board.

(2) The County Election Board Secretary shall provide the following items to the superintendent upon receiving written notice that the school district desires to close a precinct polling place:

- (A) A list of all registered voters in the precinct.
- (B) A map of the precinct.
- (C) A copy of the notification letter. See 230:40-7-50.1.
- (D) A list of all other entities with territory in the precinct.

(3) The superintendent shall identify all voters registered in the portion of the precinct contained within the school district boundaries. The superintendent shall use the list of all registered voters supplied by the County Election Board Secretary in the precinct for this purpose. The superintendent shall mark the list to indicate the voters identified within the school district. In the event that the superintendent is unable to identify any voters registered at addresses within the portion of the precinct contained within the school district, he shall certify this fact in writing to the County Election Board.

(4) Not less than 25 days before the election, the superintendent shall mail to every registered voter in that portion of the precinct contained within the school district a letter which explains that the regular precinct polling place will be closed on election day and offering information on mail and in-person absentee voting procedures. The letter shall contain substantially the same language as specified in 230:40-7-50.1. The letter shall be accompanied by an application form for a regular mail absentee ballot.

(5) The superintendent shall return the list of registered voters in the precinct, marked to indicate the voters identified in the school district. The superintendent also shall provide a signed statement that the required information, as outlined in (b)(2) of this Section, has been mailed to every voter identified in the district.

(6) After the notification letters are mailed, the superintendent also shall be required to provide notice of the

closed polling place to all voters who become registered in the precinct at addresses within the school district. These new voters also must be informed of absentee voting procedures. The superintendent must certify to the County Election Board that the newly registered voters were notified of the closed polling place.

(c) The conditions and procedures described in (a) and (b) of this Section may be applied to the Annual School Runoff Election only if the school district is the only entity holding an election in the precinct on that date. The superintendent shall notify the Secretary of the intention to close a precinct in the Annual School Runoff Election no later than 45 days prior to the date of the Annual School Runoff Election.

### **230:40-7-50.1. Notification letter [REVOKED]**

The notification letter mailed to voters in the closed precinct by the superintendent according to the provisions of 230:40-7-50(b)(2) shall contain substantially the same language as follows:

"At the request of school officials, your regular precinct polling place will be closed for the (name of school district) election to be held (date).

"Instead of voting at your regular precinct polling place, you may vote by mail absentee ballot. An application form for a mail absentee ballot is enclosed with this letter. As an alternative to voting by mail absentee ballot, you may vote in person at the (county name) Election Board office on Monday (date) from 9:00 a.m. to 5:00 p.m. The County Election Board office is located at (street address and city).

"Recent changes in the law provide these new voting alternatives and save your tax dollars by not opening and paying expenses of polling places where few voters are eligible to participate in this election.

"You may vote at your regular polling place for all other elections or you may choose to vote absentee by mail or at the County Election Board office for other elections.

"If you have questions about where or how to vote, please call the County Election Board at (phone number).

Sincerely,  
(signature of school official)  
(typed name of school official)  
(title of school official)"

### **230:40-7-50.2. County Election Board responsibilities for closed precincts**

(a) When a school district chooses to close a precinct polling place as outlined in 230:40-7-50, the County Election Board Secretary shall have the following responsibilities:

- (1) The Secretary shall provide a printout of all registered voters in the precinct which may be closed. The printout shall be provided at no cost to the school district.
- (2) The Secretary shall provide a map of the precinct.
- (3) The Secretary shall provide a copy of the recommended text of the notification letter. See 230:40-7-50.1.
- (4) The Secretary shall provide an adequate supply of yellow Application for Absentee Ballot forms.

(b) After the superintendent returns the list of voters and the signed statement as required in 230:40-7-50(b)(5), the Secretary shall have the following responsibilities:

(1) The Secretary shall monitor voter registration activity in the closed precinct. As voter registration applications are approved and activated in the precinct, the names and addresses of the voters shall be provided to the superintendent.

(2) The Secretary shall post a notice at each polling place and at the County Election Board office that the polling place is closed at the request of school officials and explaining options for mail and in person absentee voting.

(3) The Secretary shall include information about closed polling places and voting alternatives in all news releases and media references to the election.

(4) The Secretary shall provide a list of closed precincts at every open precinct in the school district on election day.

(c) In the event that the precinct closed is in an affected county of the school district, and if the superintendent has certified that no voters are registered in the portion of the precinct located within the school district's boundaries, the Secretary of the affected County Election Board shall not be required to print absentee ballots and shall not be required to provide an in person Absentee Voting Board. The Secretary of the affected County Election Board may request copies of the absentee ballots for the school district that were printed by the parent County Election Board.

**230:40-7-50.3. Voting alternatives for voters in closed precincts [REVOKED]**

Voters registered in a precinct closed for an election, as outlined in 230:40-7-50, shall be entitled to vote according to one of the following alternatives:

(1) The voter may apply for and cast a mail absentee ballot.

(2) The voter may vote by in person absentee ballot at the County Election Board office on Thursday, Friday, or Monday preceding the election.

(3) The voter may vote at any open precinct in the school district by presenting a voter identification card showing him to be registered in a closed precinct and by signing the Challenged Voter Affidavit. This alternative is not to be encouraged but must be available.

**230:40-7-51. Combining precincts in school elections [REVOKED]**

(a) **Request to combine precincts.** The Board of Education of any school or vocational-technical school district may request that the Secretary of the County Election Board move the voter registration records for any precinct within the district to the regular polling place of an adjacent precinct within the district in the same county for an election. [26:13A-101(C)] If the territory of a school district and vocational technical school district overlap within a precinct and both districts are holding elections on the same date, the voter registration records

may be moved upon request by both districts. Voter registration records shall not be moved across county lines. [26:13A-101(C)]

(b) **Time for request.** The request to combine precincts for a school election shall be made by the Board of Education in writing at the time the resolution calling the election is submitted to the County Election Board. The request shall specify the precincts to be combined.

(c) **Approval of request.** The Secretary shall approve the request unless one of the conditions described in 230:40-7-51.1 exists. Not fewer than 50 days preceding the election, or not fewer than 40 days preceding the election if the election is held on the date of the Annual School Runoff Election, the Secretary of the County Election Board shall notify the Board of Education whether any condition exists that would prohibit combining the precincts for the election.

**230:40-7-51.1. Conditions that prohibit or limit combination of precincts [REVOKED]**

(a) Voter registration records shall not be moved to an adjacent precinct for a school election if any of the following conditions exists in the precinct from which records are to be moved:

(1) Voter registration records shall not be moved if a precinct is split by two or more school or vocational technical school districts holding elections on the same day. [26:13A-101(C)]

(2) Voter registration records shall not be moved if a precinct is split by two or more board districts (see 230:40-7-8 through 230:40-7-10) holding elections on the same day. [26:13A-101(C)]

(3) Voter registration records shall not be moved if another entity is holding an election in the precinct on the same date. [26:13A-101(C)]

(b) The records of no more than two other precincts may be moved into any precinct.

**230:40-7-51.2. Responsibilities of the school district superintendent [REVOKED]**

(a) **Superintendent shall publish notice.** The superintendent shall cause a notice to be published in a newspaper of general circulation in each county in the district where precincts are to be combined. [26:13A-101(E)] The notice shall be published not fewer than ten days preceding the election. [26:13A-101(E)] The notice shall list the precinct number and the name and location of the polling places where voting will be conducted for the election, and it also shall list the precincts that are combined at each of the voting locations. The notice shall contain information concerning options for voting by mail absentee ballot and by in person absentee ballot.

(b) **Superintendent shall issue press release.** The superintendent shall prepare a press release and shall issue it to all newspapers and radio stations in each county in the district in which precincts are to be combined. The press release also shall be issued to local television stations, if applicable. The press release shall be issued not fewer than ten days preceding the election. [26:13A-101(E)] The press release shall list the precinct number and the name and location of the polling

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places where voting will be conducted for the election, and it also shall list the precincts that are combined at each of the voting locations. The press release also shall contain information concerning options for voting by mail absentee ballot and by in-person absentee ballot.

## 230:40-7-51.3. Responsibilities of the County Election Board [REVOKED]

(a) ~~Secretary shall post notice at polling place.~~ The Secretary of the County Election Board shall post a notice on the door of each precinct polling place from which voter registration records are moved. [26:13A-101(E)] The notice shall be posted not fewer than ten days preceding the election. [26:13A-101(E)] The notice shall be signed and dated by the Secretary and the County Election Board seal shall be affixed to it.

(b) ~~Contents of notice.~~ The notice shall contain substantially the same language as follows.

(1) Notice to Registered Voters in Precinct (NUMBER OF PRECINCT)

(2) This precinct polling place will be closed on Tuesday, (MONTH DAY, YEAR) for the (TYPE OF ELECTION) election for the (NAME OF SCHOOL DISTRICT) School District at the request of the Board of Education.

(3) Voter registration records for this precinct have been moved for this election only to Precinct (NUMBER). The polling place for Precinct (NUMBER) is located at (NAME AND ADDRESS OF POLLING PLACE). You may vote in person at that location on election day.

(4) You are entitled to vote by absentee ballot in this election. You may apply to have an absentee ballot mailed to you. Your application must be received by the County Election Board no later than 5 p.m. (DATE OF APPLICATION DEADLINE FOR THIS ELECTION.) You may vote by in-person absentee ballot by going to the County Election Board office between the hours of 9 a.m. and 5 p.m. on Thursday, (MONTH DAY), Friday, (MONTH DAY), or Monday, (MONTH DAY).

(5) The County Election Board office is located at (ADDRESS). The telephone number of the County Election Board is (TELEPHONE NUMBER).

(c) ~~Notice on County Election Board office door.~~ The Secretary of the County Election Board shall post a notice on the door of the County Election Board office listing those polling places from which voter registration records have been moved. [26:13A-101(E)] The notice shall list the polling places to which such records have been moved. The notice shall be posted no fewer than ten days before the election. [26:13A-101(E)]

(d) ~~Preparation of Precinct Registries.~~ The Secretary of the County Election Board shall prepare a separate Precinct Registry for the election for each precinct. When a school or vocational technical school district chooses to combine precincts for an election, separate Precinct Registries for each precinct shall be sent to the polling place conducting the voting for the combined precincts.

## PART 13. EXPENSES

### 230:40-7-56.1. Expenses for combined precincts [REVOKED]

The school district shall share equally in the polling place expenses for each precinct polling place to which voter registration records are moved with any other entity holding an election in that precinct. The school district shall not be required to assume a larger share of the polling place expenses because the records have been moved there.

## PART 23. MULTI-COUNTY SCHOOL DISTRICTS

### 230:40-7-97. Multi-county school districts

A multi-county school district is a school district which includes within its boundaries territory located in two or more counties. Most vocational technical school technology center districts are multi-county school districts. Independent and elementary school districts may be multi-county districts.

[OAR Docket #03-681; filed 4-21-03]

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

[OAR Docket #03-682]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Recounts

Part 7. Recounts for Question Elections

230:45-3-36. Petitions presumed valid [REVOKED]

230:45-3-36.1. Petitions verified [NEW]

### AUTHORITY:

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

### DATES:

#### Comment period:

January 2, 2003, through February 3, 2003

#### Public hearing:

February 3, 2003

#### Adoption:

February 19, 2003

#### Submitted to Governor:

February 19, 2003

#### Submitted to House:

February 19, 2003

#### Submitted to Senate:

February 19, 2003

#### Gubernatorial approval:

March 24, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2003

#### Final adoption:

April 15, 2003

#### Effective:

July 1, 2003

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 3. Recounts

Part 7. Recounts for Question Elections

230:45-3-36. Petitions presumed valid [REVOKED]

230:45-3-36.1. Petitions verified [NEW]

**Gubernatorial approval:**

1-2-03

**Register Publication:**

20 Ok Reg 493

**Docket number:**

#03-77

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

An amendment to 26:8-111 requires the County Election Board Secretary to verify the validity of the signatures on a petition requesting a recount in a question election. Amendments in Subchapter 3 accommodate this requirement.

**CONTACT PERSON:**

Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

**SUBCHAPTER 3. RECOUNTS**

**PART 7. RECOUNTS FOR QUESTION ELECTIONS**

**230:45-3-36. Petitions presumed valid [REVOKED]**

~~A petition filed pursuant to 230:45-3-35 is presumed to be valid. The Secretary of the County Election Board shall count the number of signatures on the petition to ascertain that the minimum required number of signatures is present. The Secretary shall not attempt to verify the signatures against either the Precinct Registries or voter registration records.~~

**230:45-3-36.1. Petitions verified**

Within 24 hours of receiving a petition requesting a recount of the results of a question election, the Secretary of the County Election Board shall determine whether the petition contains a sufficient number of valid signatures. The 24-hour period shall not include Saturday, Sunday or legal holidays. The Secretary shall follow these steps to determine the validity of signatures on the petition.

- (1) Photocopy the petition pages and use the photocopy during the verification process.
- (2) Determine the minimum number of valid signatures required. See 230:45-3-35.
- (3) Count the total signatures on the petition. Note the total number of signatures in the upper left corner of the first page.
- (4) Use OEMS to verify that each person who signed the petition is a registered voter. Write the voter ID number and precinct number beside the voter's name on the petition.

(A) If a signer's name is not found in OEMS, look in the Central File and the restricted records status file. If the signer's name is not found in either of these

files, the person is not registered. Strike through the person's name on the photocopy.

(B) If the signer's name is found in the Central File or in the restricted records status file, note the voter ID number and the precinct number beside the name on the petition.

(5) Refer to the appropriate Precinct Registry to verify that the voter voted in the election.

(A) If the voter did not sign the Precinct Registry, check absentee voting records to determine whether the voter cast an absentee ballot in the election.

(B) If the voter did not vote in the election strike through the name on the petition.

(6) After verifying each signature on the petition as outlined in steps (4) and (5), count the number of valid signatures.

(A) If there are at least the minimum required number of valid signatures, the petition is valid. Proceed with arrangements for the recount.

(B) If there are fewer than the minimum required number of valid signatures, the petition is not valid. Notify the person who filed the petition that it has been determined to be invalid and that the recount cannot be conducted.

*[OAR Docket #03-682; filed 4-21-03]*

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

*[OAR Docket #03-700]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 7. Environmental Permit Process
- Part 1. The Process
- 252:4-7-13 [AMENDED]
- Part 3. Air Quality Division Tiers and Time Lines
- 252:4-7-32 [AMENDED]
- 252:4-7-33 [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S. § 2-5-101, *et seq.*

**DATES:**

**Comment period:**

September 16, 2002 through October 16, 2002  
November 14, 2002

**Public hearing:**

October 16, 2002 and November 14, 2002

**Adoption:**

November 14, 2002

**Submitted to Governor:**

November 22, 2002

**Submitted to House:**

November 22, 2002

**Submitted to Senate:**

November 22, 2002

**Gubernatorial approval:**

January 2, 2003

# Permanent Final Adoptions

## Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

## Final adoption:

March 25, 2003

## Effective:

June 1, 2003

## SUPERSEDED EMERGENCY ACTIONS:

None

## INCORPORATIONS BY REFERENCE:

None

## ANALYSIS:

The proposed amendments would correct Title V program deficiencies identified by the U.S. Environmental Protection Agency. The following changes, affecting only Air Quality Division actions, are being made.

An additional provision in 252:4-7-13(g)(1) will require that notices for Air Quality Division permit actions subject to the Chapter 4 notice requirements be made by publication in a newspaper of general circulation in the area where the source is located, and also to persons on a mailing list developed by the DEQ, and by other means as needed to assure adequate notice to the affected public.

252:4-7-13(g)(2) requires that the notice identify the emissions change involved in any permit modification.

252:4-7-13(g)(3) requires that written notice must be given to the environmental regulatory agency of a neighboring state for an application for a Part 70 permit that may affect the air quality of that state. In conjunction with the addition of paragraph (3), the phrase "or a Part 70 permit that may affect the air quality of a neighboring state" is deleted from 252:4-7-13(f)(2).

252:4-7-13(g)(4) requires that in order for operating permits to be issued to new sources without redundant public review, the notice preceding public review on the construction permit will stipulate the conditions under which additional public review will not be required.

Approval of alternative emissions reduction authorizations under Subchapter 11, and approval of plant-wide emission plans under Subchapters 37 or 39, which are now Tier I actions, will become Tier II actions. The appropriate changes are in 252:4-7-32(c) and 252:4-7-33(c).

252:4-7-32(a)(3) is deleted since minor facility operating permits do not require renewal.

## CONTACT PERSON:

Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 794-6800

**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 JUNE 1, 2003.**

## SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

### PART 1. THE PROCESS

#### 252:4-7-13. Notices

(a) **Statutory requirements for notice.** The Uniform Environmental Permitting Act requires an applicant to give notice in accordance with 27A O.S. § 2-14-301.

(b) **Notice to landowner.** Applicants shall certify by affidavit that they own the real property, have a current lease or easement which is given to accomplish the permitted purpose or have provided legal notice to the landowner.

(c) **Notice content.** The applicant shall provide DEQ with a draft notice for approval prior to publication. All published legal notice(s) shall contain the:

- (1) Name and address of the applicant;

- (2) Name, address and legal description of the site, facility and/or activity;
- (3) Purpose of notice;
- (4) Type of permit or permit action being sought;
- (5) Description of activities to be regulated;
- (6) Locations where the application may be reviewed;
- (7) Names, addresses and telephone numbers of contact persons for the DEQ and for the applicant;
- (8) Description of public participation opportunities and time period for comment and requests; and
- (9) Any other information required by DEQ rules.

(d) **Proof of publication.** Within twenty (20) days after the date of publication, an applicant shall provide the DEQ with a written affidavit of publication for each notice published. In case of a mistake in a published notice, the DEQ shall require a legal notice of correction or republication of the entire notice, whichever is appropriate. Inconsequential errors in spelling, grammar or punctuation shall not be cause for correction or republication.

(e) **Exception to notice requirement.** Applicants for solid waste transfer station permits may be exempt from public meeting requirements under 27A O.S. § 2-10-307.

(f) **Additional notice.**

(1) Applicants for a NPDES, RCRA or UIC permit are subject to additional notice provisions of federal requirements adopted by reference as DEQ rules.

(2) Applicants for a proposed wastewater discharge permit that may affect the water quality of a neighboring state ~~or a Part 70 permit that may affect the air quality of a neighboring state~~ must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-5-112(E)]

(3) Applicants for a landfill permit shall provide notice by certified mail, return receipt requested, to owners of mineral interests and to adjacent landowners whose property may be substantially affected by installation of a landfill site. See *DuLaney v. OSDH*, 868 P.2d 676 (Okla. 1993).

(g) **Additional notice content requirements for Clean Air Act Permits.** In addition to the notice provisions of 27A O.S. §§ 2-14-301 and 2-14-302 and other provisions of this section, the following requirements apply.

(1) Applicants shall give notice by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the DEQ, including those who request in writing to be on the list; and by other means if determined by the Executive Director to be necessary to assure adequate notice to the affected public.

(2) All published notice(s) for permit modification shall identify the emissions change involved in the modification.

(3) An applicant for a Part 70 permit that may affect the air quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-5-112(E)]

(4) An operating permit may be issued to an applicant for a new Part 70 operating permit without public review

if the operating permit is based on a construction permit that meets the requirements of 252:4-7-32(b)(1)(B) and the public notice for the construction permit contains the following language.

(A) This permit is subject to EPA review, EPA objection, and petition to EPA, as provided by 252:100-8-8 and 40 CFR § 70.8.

(B) If the operating permit has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2), the operating permit will be issued without public notice and comment; and,

(C) The public will not receive another opportunity to provide comments when the operating permit is issued.

### PART 3. AIR QUALITY DIVISION TIERS AND TIME LINES

#### 252:4-7-32. Air quality applications - Tier I

(a) **Minor facility permits.** The following air quality authorizations for minor facilities require Tier I applications.

(1) **New permits.** New construction, operating and relocation permits.

(2) **Modifications of permits.**

(A) Modification of a construction permit for a minor facility that will remain minor after the modification.

(B) Modification of an operating permit that will not change the facility's classification from minor to major.

(C) Extension of expiration date of a construction permit.

~~(3) **Renewals.** Renewals of operating permits.~~

(b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier I applications.

(1) **New permits.**

(A) New construction permit for an existing Part 70 source for any change considered minor under 252:100-8-7.2(b)(1).

(B) New operating permit that:

(i) is based on a construction permit that was processed under Tier II or III, and 252:100-8-8, and

(ii) has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2).

(2) **Modifications of permits.**

(A) Modification of any operating permit condition that:

(i) is based on the operating conditions of a construction permit that was processed under Tier II or III, and 252:100-8-8, and

(ii) does not differ from those construction permit conditions in any way considered significant under 252:100-8-7.2(b)(2).

(B) A construction or operating permit modification that is minor under 252:100-8-7.2(b)(1).

(C) Extension of expiration date of a Part 70 source's construction permit with no or minor modifications.

(c) **Other authorizations.** The following air quality authorizations require Tier I applications.

(1) New, modified and renewed individual authorizations under general operating permits for which a schedule of compliance is not required by ~~252:100-8-5(e)(8)(B)(i)~~ 252:100-8-5(e)(8)(B)(i).

(2) Burn approvals.

~~(3) Plant-wide emission plan approval under 252:100-37-25(b) or 252:100-39-46(j).~~

(43) Administrative amendments of all air quality permits and other authorizations.

~~(5) Alternative emissions reduction authorizations. (Also subject to state implementation plan revision procedures in 252:100-11.)~~

#### 252:4-7-33. Air quality applications - Tier II

(a) **Minor facility permit actions.** Any minor facility seeking a permit for a modification that when completed would turn it into a Part 70 source is required to apply under subsection (b) of this section.

(b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier II applications.

(1) **New permits.**

(A) New construction permit for a new Part 70 source not classified under Tier III.

(B) New construction permit for an existing Part 70 source for any change considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.

(C) New operating permit for a Part 70 source that did not have an underlying construction permit processed under Tier II or III, and 252:100-8-8.

(D) New operating permit with one or more conditions that differ from the underlying Tier II or III construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).

(E) New acid rain permit that is independent of a Part 70 permit application.

(F) New temporary source permit under 252:100-8-6.2.

(2) **Modifications of permits.**

(A) Significant modification, as described in 252:100-8-7.2(b)(2), of an operating permit that is not based on an underlying construction permit processed under Tier II or III, and 252:100-8-8.

(B) Modification of an operating permit when the conditions proposed for modification differ from the underlying construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).

(C) A construction permit modification considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.

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- (3) **Renewals.** Renewals of operating permits.
- (c) **Other authorizations.** The following air quality authorizations require Tier II applications.
- (1) New, modified and renewed general operating permits.
- (2) Individual authorizations under any general operating permit for which a schedule of compliance is required by 252:100-8-5(c)(8)(B)(i).
- (3) Plant-wide emission plan approval under 252:100-37-25(b) or 252:100-39-46(j).
- (4) Alternative emissions reduction authorizations. (Also subject to state implementation plan revision procedures in 252:100-11.)

[OAR Docket #03-700; filed 4-21-03]

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

[OAR Docket #03-701]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 4. New Source Performance Standards  
252:100-4-5 [AMENDED]

### AUTHORITY:

Environmental Quality Board; 27A O.S., §§ 2-2-101, and 2-2-201; and Oklahoma Clean Air Act, 27A O.S., § 2-5-101, *et seq.*

### DATES:

#### Comment period:

September 16, 2002 through October 16, 2002 and November 14, 2002

#### Public hearing:

October 16, 2002 and November 14, 2002

#### Adoption:

November 14, 2002

#### Submitted to Governor:

November 22, 2002

#### Submitted to House:

November 22, 2002

#### Submitted to Senate:

November 22, 2002

#### Gubernatorial approval:

January 2, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

#### Final adoption:

March 25, 2003

#### Effective:

June 1, 2003

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

##### Incorporated standards:

40 CFR Part 60 is hereby incorporated by reference, as it exists on July 1, 2002, except for the following: Sections 60.4, 60.9, 60.10, and 60.16 of Subpart A, General Provisions; Subpart B, Adoption and Submittal of State Plans for Designated Facilities; Subpart C, Emission Guidelines and Compliance Times; Subpart Ca, Emissions Guidelines and Compliance Times for Municipal Waste Combustors; Subpart Cb, Emissions Guidelines and Compliance Times for Municipal Waste Combustors That Are Constructed on or Before September 20, 1994; Subpart Cc, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills; Subpart Cd, Emissions Guidelines and Compliance Times for Sulfuric Acid

Production Units; Subpart Ce, Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators. Subpart AAA, Standards of Performance for New Residential Wood Heaters; Appendix G, Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service.

#### Incorporating rules:

252:100-4-5

#### Availability:

The standards are on file at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.

#### ANALYSIS:

The DEQ is proposing to amend Subchapter 4 to incorporate by reference all federal New Source Performance Standards (NSPS) adopted or amended from July 1, 2001, to July 1, 2002. The U.S. Environmental Protection Agency has amended several previously incorporated NSPS Subparts since July 1, 2001. These are Subpart A, General Provisions, Subpart Eb, Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996, Subpart Da, Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, and Subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.

#### CONTACT PERSON:

Michelle Martinez, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**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 JUNE 1, 2003:**

## SUBCHAPTER 4. NEW SOURCE PERFORMANCE STANDARDS

### 252:100-4-5. Incorporation by reference

40 CFR Part 60 is hereby incorporated by reference, as it exists on July 1, ~~2001~~ 2002, except for the following:

- (1) **Sections 60. 4, 60.9, 60.10 and 60.16 of Subpart A.** General Provisions.
- (2) **Subpart B.** Adoption and Submittal of State Plans for Designated Facilities.
- (3) **Subpart C.** Emission Guidelines and Compliance Times.
- (4) **Subpart Ca.** Emissions Guidelines and Compliance Times for Municipal Waste Combustors.
- (5) **Subpart Cb.** Emissions Guidelines and Compliance Times for Municipal Waste Combustors That Are Constructed on or Before September 20, 1994.
- (6) **Subpart Cc.** Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.
- (7) **Subpart Cd.** Emissions Guidelines and Compliance Times for Sulfuric Acid Production Units.
- (8) **Subpart Ce.** Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.
- (9) **Subpart AAA.** Standards of Performance for New Residential Wood Heaters.

(10) **Appendix G.** Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service.

[OAR Docket #03-701; filed 4-21-03]

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

[OAR Docket #03-703]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 8. Permits for Part 70 Sources  
Part 5. Permits for Part 70 Sources  
252:100-8-2 [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S. § 2-5-101, *et seq.*

**DATES:**

**Comment period:**

June 17, 2002 through July 17, 2002  
September 10, 2002

**Public hearing:**

July 17, 2002 and September 10, 2002

**Adoption:**

September 10, 2002

**Submitted to Governor:**

September 19, 2002

**Submitted to House:**

September 19, 2002

**Submitted to Senate:**

September 19, 2002

**Gubernatorial approval:**

October 29, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

The DEQ is proposing to revise the definition of "major source" for Part 70 sources in Section 2 of Subchapter 8. A federal rule incorporating this change was published and made final on November 27, 2001. Permitting authorities, including the Oklahoma DEQ, are required to revise their programs to incorporate this change. The proposed revision consists of deleting from subdivision (xxvii) of subparagraph (B) the words: "but only with respect to those air pollutants that have been regulated for that category."

**CONTACT PERSON:**

Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 794-6800

**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 JUNE 1, 2003:**

**SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES**

**PART 5. PERMITS FOR PART 70 SOURCES**

**252:100-8-2. Definitions**

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this Section, terms used in this Part retain the meaning accorded them under the applicable requirements of the Act.

**"Administratively complete"** means an application that provides:

- (A) All information required under OAC 252:100-8-5(c), (d), or (e);
- (B) A landowner affidavit as required by OAC 252:2-15-20(b)(3);
- (C) The appropriate application fees as required by OAC 252:100-8-1.7; and
- (D) Certification by the responsible official as required by OAC 252:100-8-5(f).

**"Affected source"** means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

**"Affected states"** means:

- (A) all states:
  - (i) That are one of the following contiguous states: Arkansas, Colorado, Kansas, Missouri, New Mexico and Texas, and
  - (ii) That in the judgment of the DEQ may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or
- (B) all states that are within 50 miles of the permitted source.

**"Affected unit"** means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

**"Applicable requirement"** means all of the following as they apply to emissions units in a Part 70 source subject to this Chapter (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

- (A) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act;
- (C) Any standard or other requirement under section 111 of the Act, including section 111(d);

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(D) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under 112(r) of the Act;

(E) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(F) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(G) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(H) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(I) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(J) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and

(K) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

**"Designated representative"** means with respect to affected units, a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

**"Draft permit"** means the version of a permit for which the DEQ offers public participation under 27A O.S. §§ 2-14-101 through 2-14-401 and OAC 252:100-2-15 or affected State review under OAC 252:100-8-8.

**"Emergency"** means, when used in OAC 252:100-8-6(a)(3)(C)(iii)(I) and (e), any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

**"Emissions allowable under the permit"** means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

**"Emissions unit"** means any part or activity of a stationary source that emits or has the potential to emit any regulated

air pollutant or any pollutant listed under section 112(b) of the Act. Fugitive emissions from valves, flanges, etc. associated with a specific unit process shall be identified with that specific emission unit. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act.

**"Final permit"** means the version of a part 70 permit issued by the DEQ that has completed all review procedures required by OAC 252:100-8-7 through 252:100-8-7.5 and OAC 252:100-8-8.

**"Fugitive emissions"** means those emissions of regulated air pollutants which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

**"General permit"** means a part 70 permit that meets the requirements of OAC 252:100-8-6.1.

**"Insignificant activities"** means individual emissions units that are either on the list approved by the Administrator and contained in Appendix I, or whose actual calendar year emissions do not exceed any of the limits in (A) through (C) of this definition. Any activity to which a State or federal applicable requirement applies is not insignificant even if it meets the criteria below or is included on the insignificant activities list.

(A) 5 tons per year of any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an aggregate of two or more HAP's, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

(C) 0.6 tons per year for any one category A substance, 1.2 tons per year for any one category B substance or 6 tons per year for any one category C substance as defined in OAC 252:100-41-40.

**"MACT"** means maximum achievable control technology.

**"Major source"** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in subparagraph (A), (B), or (C) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987.

(A) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year ("tpy") or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the

preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or.

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any regulated air pollutant (except that fraction of particulate matter that exhibits an average aerodynamic particle diameter of more than 10 micrometers) (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) All other stationary source categories which, as of August 7, 1980, are being regulated

by a standard promulgated under section 111 or 112 of the Act, ~~but only with respect to those air pollutants that have been regulated for that category.~~

(C) A major stationary source as defined in part D of Title I of the Act, including:

(i) For ozone non-attainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide non-attainment areas:

- (I) that are classified as "serious"; and
- (II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) non-attainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

**"Maximum capacity"** means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source.

**"Permit"** means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

**"Permit modification"** means a revision to a Part 70 construction or operating permit that meets the requirements of OAC 252:100-8-7.2(b).

**"Permit program costs"** means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in OAC 252:100-5-2.2 (whether such costs are incurred by the DEQ or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

**"Permit revision"** means any permit modification or administrative permit amendment.

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**"Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

**"Proposed permit"** means the version of a permit that the DEQ proposes to issue and forwards to the Administrator for review in compliance with OAC 252:100-8-8.

**"Regulated air pollutant"** means the following:

(A) Nitrogen oxides or any volatile organic compound (VOC), including those substances defined in OAC 252:100-1-3, 252:100-37-2, and 252:100-39-2, except those specifically excluded in the EPA definition of VOC in 40 CFR 51.100(s);

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II ozone-depleting substance subject to a standard promulgated under or established by Title VI of the Act;

(E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act (Hazardous Air Pollutants), including sections 112(g) (Modifications), (j) (Equivalent Emission Limitation by Permit, and (r) (Prevention of Accidental Releases), including the following:

(i) any pollutant subject to the requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act (Schedule for Standards and Review), any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and,

(ii) any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement; or

(F) Any other substance for which an air emission limitation or equipment standard is set by an existing permit or regulation.

**"Renewal"** means the process by which a permit is reissued at the end of its term.

**"Responsible official"** means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who

performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Subchapter, a principal executive officer or installation commander of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Subchapter.

**"Section 502(b)(10) changes"** means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

**"Small unit"** means a fossil fuel fired combustion device which serves a generator with a name plate capacity of 25 MWe or less.

**"State-only requirement"** means any standard or requirement pursuant to Oklahoma Clean Air Act (27A O.S. §§ 2-5-101 through 2-5-118, as amended) that is not contained in the State Implementation Plan (SIP).

**"State program"** means a program approved by the Administrator under 40 CFR Part 70.

**"Stationary source"** means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

**"Trivial activities"** means any individual or combination of air emissions units that are considered inconsequential and are on a list approved by the Administrator and contained in Appendix J.

**"Unit"** means, for purposes of Title IV, a fossil fuel-fired combustion device.

[OAR Docket #03-703; filed 4-21-03]

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

[OAR Docket #03-702]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 8. Permits for Part 70 Sources  
Part 5. Permits for Part 70 Sources  
252:100-8-5 [AMENDED]  
252:100-8-7.2 [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S. § 2-5-101, *et seq.*

**DATES:**

**Comment period:**

September 16, 2002 through October 16, 2002  
November 14, 2002

**Public hearing:**

October 16, 2002 and November 14, 2002

**Adoption:**

November 14, 2002

**Submitted to Governor:**

November 22, 2002

**Submitted to House:**

November 22, 2002

**Submitted to Senate:**

November 22, 2002

**Gubernatorial approval:**

January 2, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

The Department is considering the following revisions to Subchapter 8 that are a condition of the full approval of our Title V program. The Department proposes to revise the language in OAC 252:100-8-5(e)(3) to make clear that the fugitive emissions from sources subject to the Part 70 operating permit program must be included in the permit application and the permit in the same manner as stack emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source. The Department proposes to delete "upon the Administrator's request" from OAC 252:100-8-7.2(a)(3)(B). The federal rule requires that all administrative amendments be provided to EPA. EPA does not have to request them. The Department proposes to delete "unless waived by the Administrator" from OAC 252:100-8-7.2(b)(1)(C). The federal rule does not allow for waiver of EPA's objection or petition rights.

The Department is also considering the following revisions that are "housekeeping" in nature and not substantive. The Department proposes to change references to OAC 252, Chapter 2 to the appropriate sections of Chapter 4 in OAC 252:100-8-5(c) and 252:100-8-7.2(b)(1)(B) and (D) because Chapter 4 has replaced Chapter 2. The Department proposes to change the format of the citations in OAC 252:100-8-5 and 252:100-8-7.2 for clarity and uniformity.

**CONTACT PERSON:**

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

**SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2003:**

**SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES**

**PART 5. PERMITS FOR PART 70 SOURCES**

**252:100-8-5. Permit applications**

(a) **Confidential information.** If a source submits information to the DEQ under a claim of confidentiality, the source shall also submit a copy of such information directly to the Administrator, if the DEQ requests that the source do so.

(b) **Duty to supplement or correct application.** Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information within 30 days unless the applicant's request for more time has been approved by the DEQ. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) **Standard application form and required information.** Sources that are subject to the Part 70 permit program established by this Chapter shall file applications on the standard application form that the DEQ makes available for that purpose ~~in accordance with OAC 252:2-15~~. The application must include information needed to determine the applicability of any applicable requirement, or state-only requirement, or to evaluate the fee amount required under the schedule approved pursuant to OAC 252:100-5-2.2(b)(2). The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted. The source must provide a list of any insignificant activities that are exempted because of size or production rate. Trivial activities need not be listed. The standard application form and any attachments shall require that the information required by OAC 252:100-8-5(d) and/or (e) be provided.

(d) **Construction permit applications.**

(1) An application for a construction permit shall provide data and information required by this Chapter and/or requested on the application form available from the DEQ pursuant to the requirements of this Chapter. Such data and information shall include but not be limited to site information, process description, emission data and when required, BACT, modeling and sampling point data as follows:

(A) **BACT determination.** To be approved for a construction permit, a major source must demonstrate that the control technology to be applied is the best that is available for each pollutant that would cause the source to be defined as a major source. This determination will be made on a ~~case-by-case~~ case-by-case basis taking into account energy, environmental,

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and economic impacts and other costs of alternative control systems. Unless required under Part 7 of this Subchapter, a BACT determination is not required for a modification that will result in an increase of emissions of less than 100 tons per year of any regulated air pollutant.

(B) **Modeling.** Any air quality modeling or ambient impact evaluation that is required shall be prepared in accordance with procedures acceptable to the DEQ and accomplished by the applicant.

(C) **Sampling points.** If required by the DEQ an application shall show how the new source will be equipped with sampling ports, instrumentation to monitor and record emission data and other sampling and/or testing equipment.

(2) Construction permit applications for new sources must also include the requirements for operating permits contained in OAC 252:100-8-5(e) to the extent they are applicable.

(e) **Operating permit applications.**

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(A) All emissions of pollutants for which the source is major, and all emissions (including fugitive emissions) of regulated air pollutants. Fugitive emissions shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under ~~subsection (c) of this Section~~ OAC 252:100-8-5(c) or OAC 252:100-8-3(b).

(B) Identification and description of all points of emissions described in ~~subparagraph (e)(3)(A) of this Section~~ OAC 252:100-8-5(e)(3)(A) in sufficient detail to establish the basis for fees and applicability of the Act's requirements.

(C) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard.

(D) The following information to the extent it is needed to determine or regulate emissions:

- (i) fuels,
- (ii) fuel use,
- (iii) raw materials,
- (iv) production rates, and
- (v) operating schedules.

(E) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(F) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the covered source.

(G) Other information required by any applicable requirement, or state-only requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(H) Calculations on which the information in items (A) through (G) of this paragraph is based.

(4) The following air pollution control requirements:

(A) Citation and description of all applicable requirements and all state-only requirements.

(B) Description of or reference to any applicable test method for determining compliance with each applicable requirement and state-only requirement.

(5) Other specific information required under the DEQ's rules and statutes to implement and enforce other applicable requirements of the Act or of this Chapter or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements and state-only requirements.

(7) Additional information as determined to be necessary by the DEQ to define alternative operating scenarios identified by the source pursuant to OAC 252:100-8-6(a)(9) or to define permit terms and conditions implementing OAC 252:100-8-6(f) or 252:100-8-6(a)(10).

(8) A compliance plan for all covered sources that contains all the following:

(A) A description of the compliance status of the source with respect to all applicable requirements and state-only requirements as follows:

(i) For applicable requirements and state-only requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements and state-only requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(B) For sources not in complete compliance, a compliance schedule as follows:

(i) A schedule of compliance for sources that are not in compliance with all applicable requirements and state-only requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an

enforceable sequence of actions with milestones, leading to compliance with any applicable requirements and state-only requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.

(ii) A schedule for submission of certified progress reports no less frequently than every 6 months.

(C) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(A) A certification of compliance with all applicable requirements and state-only requirements by a responsible official consistent with ~~subsection (f) of this section~~ OAC 252:100-8-5(f) and section 114(a)(3) of the Act;

(B) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(C) A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement state-only requirements or by the permitting authority; and

(D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act.

(f) **Certification.** Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Chapter shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

**252:100-8-7.2. Administrative permit amendments and permit modifications**

(a) **Administrative permit amendments.**

- (1) An administrative permit amendment:
  - (A) Corrects typographical errors;
  - (B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
  - (C) Requires more frequent monitoring or reporting by the permittee;
  - (D) Allows for a change in ownership or operational control of a source where no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the DEQ;
  - (E) Incorporates into the permit the requirements from preconstruction review permits issued by the DEQ under this Part.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.

(3) An administrative permit amendment shall be made by the DEQ in accordance with the following:

(A) The DEQ shall take final action on a request for an administrative permit amendment within 60 days from the date of receipt of such a request, and may incorporate the proposed changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(B) The DEQ shall submit a copy of the revised permit to the Administrator ~~upon the Administrator's request.~~

(C) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The DEQ shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in OAC 252:100-8-6(d) for administrative permit amendments made pursuant to ~~subparagraph 7.2(a)(1)(E) of this Section~~ OAC 252:100-8-7.2(a)(1)(E).

(b) **Permit modification.** A permit modification is any revision to a permit that cannot be accomplished under ~~subsection (a) of this Section~~ OAC 252:100-8-7.2(a). A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.

(1) **Minor permit modification procedures.**

(A) **Criteria.**

(i) Minor permit modification procedures may be used only for those permit modifications that:

- (I) Do not violate any applicable requirement, or state-only requirements;
- (II) Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;
- (III) Do not require or change a case-by-case determination of an emission limitation or

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other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(IV) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include federally-enforceable emissions caps assumed to avoid classification as a modification under any provision of Title I and alternative emissions limits approved pursuant to regulations promulgated under § 112(i)(5) of the Act; and

(V) Are not modifications under any provision of Title I of the Act.

(ii) Notwithstanding OAC 252:100-8-7.2(b)(1)(A)(i) and 252:100-8-7.2(b)(2)(A), minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State's implementation plan or in applicable requirements promulgated by EPA.

(B) **Application.** To use the minor permit modification procedures, a source shall submit an application requesting such use which shall meet the permit application requirements of Tier I under OAC ~~252:2-15-252:4-7~~ and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs;

(ii) The source's suggested modification language;

(iii) Certification by a responsible official, that the application and the proposed modification meet the criteria for use of minor permit modification procedures; and

(iv) Completed forms for any notices required by OAC ~~252:2-15-252:4-7~~ and ~~subparagraph (C) of this paragraph~~ OAC 252:100-8-7.2(b)(1)(C).

(C) **EPA and affected state notification.** If the proposed minor modification is of a permit that underwent EPA review in accordance with OAC 252:100-8-8, the provisions of that section shall apply to the minor modification application ~~unless waived by the Administrator.~~

(D) **Timetable for issuance.** Within 90 days of the DEQ's receipt of a complete application under OAC ~~252:2-15-252:4-7~~ the DEQ shall:

(i) Issue the minor permit modification as approved;

(ii) Deny the minor permit modification application; or

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures or administrative amendment procedures.

(E) **Source's ability to make change.** Immediately after filing an application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application. After the source makes the change and until the DEQ takes any of the actions specified in ~~(1)(D)(i) through (iii) of this subsection~~ OAC 252:100-8-7.2(b)(1)(D)(i) through (iii), the source must comply with the applicable requirements and state-only requirements governing the change and the proposed permit terms and conditions. During this period, the source need not comply with the existing terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(F) **Permit shield.** The permit shield under OAC 252:100-8-6(d) will not extend to minor permit modifications.

(G) **Permittee's risk in commencing construction.** The permittee assumes the risk of losing any investment it makes toward implementing a modification prior to receiving a permit amendment authorizing the modification. The DEQ will not consider the possibility of the permittee suffering financial loss due to such investment when deciding whether to approve, deny, or approve in modified form a minor permit amendment.

(2) **Significant modification procedures.**

(A) **Criteria.** Significant modification procedures shall be used for applications requesting permit modifications that:

(i) Involve any significant changes in existing monitoring requirements in the permit;.

(ii) Relax any reporting or recordkeeping requirements.

(iii) Change any permit condition that is required to be based on a case-by-case determination of an emission limitation or other standard, on a source-specific determination of ambient impacts, or on a visibility or increment analysis;

(iv) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include:

- (I) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I;
  - (II) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act; and
  - (v) Are modifications under any provision of Title I of the Act; and,
  - (vi) Do not qualify as minor permit modifications or administrative amendments.
- (B) **Procedures for processing.** Significant permit modifications shall meet all requirements of these rules that are applicable to Tier II applications. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs.
- (C) **Issuance.** The DEQ shall complete review of significant permit modifications within nine months after receipt of a complete application, but shall be authorized to extend that date by up to three months for cause.

[OAR Docket #03-702; filed 4-21-03]

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

[OAR Docket #03-704]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 11. Alternative Emissions Reduction Plans and Authorizations
- 252:100-11-1 [AMENDED]
- 252:100-11-2 [AMENDED]
- 252:100-11-3 [AMENDED]
- 252:100-11-4 [AMENDED]
- 252:100-11-5 [AMENDED]
- 252:100-11-6 [AMENDED]
- 252:100-11-7 [NEW]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S. § 2-5-101, *et seq.*

**DATES:**

**Comment period:**

- December 17, 2001 through January 16, 2002
- March 15, 2002 through April 17, 2002
- June 17, 2002 through July 17, 2002
- September 10, 2002

**Public hearing:**

January 16, 2002, April 17, 2002, July 17, 2002, and September 10, 2002

**Adoption:**

September 10, 2002

**Submitted to Governor:**

September 19, 2002

**Submitted to House:**

September 19, 2002

**Submitted to Senate:**

September 19, 2002

**Gubernatorial approval:**

October 29, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

Because Subchapter 11 is not part of Oklahoma's SIP, applicants for an alternative emissions reduction plan must secure approval from both the DEQ and EPA. The proposed changes are designed to enhance an applicant's chance of receiving EPA's approval of an alternative emissions reduction plan. New is a requirement that the plan provide a reduction in the facility's actual emissions of all regulated pollutants for which the plan is proposed. The applicant must quantify this reduction on a pollutant-by-pollutant basis and demonstrate that implementation of the plan will not result in violation of national ambient air quality standards. The definition of "net emissions reduction" is amended to clarify that net emissions reduction is calculated by subtracting the emissions allowed by the alternate emissions reduction plan from the smallest of the following: the facility's actual emissions, the amount allowed under the operating permit, or the amount allowed by rule. New definitions are included for the terms "actual emissions," "affected emission point," "affected pollutant," and "potential emissions". To clarify whether rule requirements apply to individual emission sources or to the entire facility, the term "source" is replaced with the term "facility" or the term "affected emission point," as appropriate. Additional information is required in an application for an alternative emissions reduction. Alternative emissions reduction plan requirements and limitations are clarified. To facilitate rule enforcement a new section specifies the facility's duty to comply with an authorized alternative emissions reduction plan. Other proposed changes are "housekeeping" in nature and are nonsubstantive. The public notice requirement is replaced with a reference to OAC 252:4-7-13, which contains public notice requirements for the Agency. The word "plan" has been added in subsection 11-4(b) for clarity, and the abbreviation "OAC" has been added before rule citations in subsection 11-4(c), paragraph 11-5(a)(1), and subsection 11-6(a) for consistency in format.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2003:**

**SUBCHAPTER 11. ALTERNATIVE EMISSIONS REDUCTION PLANS AND AUTHORIZATIONS**

**252:100-11-1. Purpose**

The purpose of this Subchapter is to provide ~~air-contaminant sources-facilities~~ located within the state an alternative means for reducing the total burden of regulated air pollutants released into the atmosphere.

**252:100-11-2. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:₂

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"Actual emissions" for purposes of this Subchapter, means the lowest emission rate in tons per year at which the facility actually emitted a specific pollutant during the three-year period immediately preceding the date of the alternative emissions reduction plan. The DEQ may allow the use of a different time period upon a determination that it is more representative of normal operations.

"Affected emission point" for purposes of this Subchapter, means an emission point that will undergo an emissions reduction or emissions increase in an alternative emissions reduction plan.

"Affected pollutant" for purposes of this Subchapter, means any regulated air pollutant that is reduced or increased as a result of the implementation of an alternative emissions reduction plan.

"Capability to emit" means the maximum capacity of a source to emit considering reduction from air pollution controls and other enforceable restrictions such as hours of operation, types of raw material or fuel, etc.

"Facility" means all of the pollutant emitting activities which belong to the same industrial grouping as described in the Standard Industrial Classification Manual (1987 Supplement) with the same code number and which are under the control of the same person or under common control and which are located on contiguous or adjacent properties.

"Net emissions reduction" means the amount by which a source will reduce its levels of emitted pollutants under an Alternative Emissions Reduction Plan. Such determination shall be based on the allowable emissions of a specific pollutant under the Alternative Emissions Reduction Plan, subtracted from either the source's capability to emit or the amount allowed under the source's operating permit or regulation, whichever is less. Emissions from a facility will be reduced in an alternative emissions reduction plan. Net emissions reduction shall be calculated by subtracting the emissions of a specific pollutant allowed under an alternative emissions reduction plan from the facility's actual emissions, potential emissions, the emissions allowed under the operating permit, or the emissions allowed by rule, whichever is least.

"Potential emissions" for purposes of this Subchapter, means the level of emissions a source emits when operating at maximum capacity considering enforceable reductions from air pollution controls and other enforceable restrictions such as hours of operation, types of raw material or fuel, etc.

## 252:100-11-3. Applicability

The procedures detailed in this Subchapter shall be available to all air contaminant sources located within the state except those precluded by federal law or federal regulation, e.g., Prevention of Significant Deterioration (PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP) or New Source Performance Standards (NSPS), from participating in an alternative emissions reduction program (e.g., PSD, NESHAP, or NSPS) provided:

- (1) the source-facility is either in compliance with all applicable state air pollution control rules, or
- (2) if the source-facility is not in compliance, its with any emission limit or standard, the petition filed pursuant

to the provisions of this Subchapter constitutes a commitment to achieve a net emissions reduction from the source taken-facility as a whole that is equal to or greater than the amount by which the emission limit or standard is exceeded.

## 252:100-11-4. Application for alternative emissions reduction plan authorizations

(a) **Filing.** A source-facility seeking to operate under an alternative emissions reduction plan (referred to as the plan) shall submit an application for authorization to the DEQ.

(b) **Content.** An alternative emissions reduction plan application shall include, but shall not be limited to, the following information:

- (1) ~~Identification~~ identification of the applicant source facility by name and location;
- (2) ~~The~~ the name, address, and telephone/fax numbers of the owner or operator of the applicant source-facility;
- (3) ~~The~~ the permit number under which each affected emission point is presently operating or, if the commencement of emissions from each affected emission point occurred before the specified compliance date of the State's operating permit rule, the date of such commencement-affected emission point is grandfathered from permit requirements, the date emissions of each affected pollutant from each affected emission point commenced;
- (4) a narrative of the proposed plan including a description of the means and methods to achieve the proposed alternative reductions;
- (5) the specific requirement for which an exemption is being requested and why that requirement cannot or is not being met;
- (6) ~~Identification of the affected emission points within the source and the affected pollutants emitted therefrom~~ a plot plan of all the emission points at the facility identifying the affected emission points within the facility and all affected pollutants emitted from each emission point, clearly marking the measured distance between each affected emission point, showing the stack height of each emission point or proposed emission point, showing the location of existing air pollution control equipment and the particular emission points controlled by this equipment, and showing the proposed location of any new control equipment to be added as a result of the implementation of the alternative emissions reduction plan and the emission points to be controlled by this new equipment;
- (5) ~~Identification and location of existing air pollution control equipment with reference to the particular emissions sources controlled by same~~
- (6) ~~The current~~ the actual emission levels of the all affected pollutants from each emission point;
- (7) ~~Estimated levels of the affected pollutants to be emitted should the authorization be issued, including:~~
  - (A) estimates of the levels of affected pollutants to be emitted from each emission point considered, and
  - (B) control strategies and/or equipment which will be implemented to control emission levels

(8) estimated levels of any affected pollutant to be emitted should the authorization be issued including estimates of the levels of affected pollutants to be emitted from each emission point considered and control strategies and/or equipment that will be implemented to control emission levels;

~~(8) Identification—identification of all affected pollutants according to individual chemical components; particulates shall be identified according to both chemical components and particle size, and~~

~~(9) Any other information required by the application form including but not limited to:~~

~~(A) modeling/monitoring data substantiating the current ambient levels~~

~~(B) the method utilized in calculating the projected emissions levels~~

~~(C) a plot plan showing the physical relationship of each affected emission point, and~~

~~(D) the measured distance between each affected emission point clearly marked.~~

(10) as applicable, identification of particulate matter according to both chemical components and particle size;

(11) modeling/monitoring data substantiating the current ambient levels of all affected pollutants, and if required, modeling demonstrating that the plan will not cause or contribute to a violation of the NAAQS;

(12) the method utilized in calculating the projected emissions levels;

(13) if the applicant facility is out of compliance with any emission standard or limit, a compliance plan which includes dates and milestones for implementation of the elements of the alternative emissions reduction plan;

(14) the net emission reduction as defined in OAC 252:100-11-2, and;

(15) any other information required by the application form.

(c) **Multiple facilities.** If the application includes more than one facility under the control of the applicant, ~~it~~ located on contiguous or adjacent property, and affecting the same airshed, in addition to the information required in OAC 252:100-11-4(b), the application shall include, in addition to the information required in 252:100-11-4(b) for the respective facilities, a plot plan showing the physical relationship of the facilities, ~~and with~~ the measured distance between the facilities clearly marked.

**252:100-11-5. Emissions reduction plan requirements and limitations**

(a) **Application requirements Requirements.** An application for an alternative emissions reduction plan authorization ~~must conform to the following requirements:~~

(1) An acceptable alternative emissions reduction plan must result in a net emissions reduction, that is, a reduction in the facility's actual emissions of all regulated air pollutants for which the plan is proposed. (This does not include air pollutants that are increased due to control equipment or strategy.) This means that a facility must reduce emissions of these regulated air pollutants by an amount

that brings the air burden to a level less than it would be if the facility were in compliance. The exact amount of the net emissions reduction will be set on a case by case basis, taking into account the status of the area, topography, weather conditions, surrounding business/residential factors, etc. The plan must conform to the following requirements.

~~(4A)~~ A net emissions reduction as defined in OAC 252:100-11-2 must be shown as a result of the control strategies proposed in the application.

(B) Facility-wide increases in any regulated air pollutants that result from the implementation of the plan shall comply with limits, standards, and requirements applicable to the emission points involved.

(C) The plan shall not cause or contribute to a violation of the NAAQS for any regulated air pollutant.

(D) The plan shall contain enforceable methods of measurement, monitoring, and reporting.

~~(2E)~~ Applications—Plans involving Part 70 sources located in Nonattainment Areas, in addition to the requirement in (4) of this subsection—OAC 252:100-11-5(a)(1)(A), (B), (C), and (D) must include a commitment to install—reasonably available control technology, maintain, and operate RACT, as defined by applicable rules, ~~or other~~ or other control measures that would achieve equivalent reductions.

(2) Multiple facilities under the control of the same owner or operator may be included in the plan if the facilities are located on contiguous or adjacent property and the emissions from all the facilities involved affect the same airshed. In addition to the requirements of OAC 252:100-11-5(a)(1), the owner or operator must demonstrate by air quality modeling that the increases and decreases in facility emissions will not adversely affect air quality in the area impacted by the affected emission points and that the plan will result in the same or better air quality level overall.

(b) **Limitation.** The following limitations shall apply to all alternative emissions reduction plans:

(1) Net emissions reduction trade-offs will not be authorized across established pollutant categories; e.g., sulfur emissions may not be traded for hydrocarbon emissions.

(2) Net emissions reduction trade-offs of particulate matter will be authorized only if the trade-off results in a net reduction in particulate matter of equal or smaller average aerodynamic diameter.

**252:100-11-6. Authorization procedures**

(a) **Determination.** Within 30 days after receipt of all information required to accomplish the analysis ~~in 252:100-11-5~~ of an application for an alternative emissions reduction plan, the DEQ will make a determination whether the plan should be authorized, authorized with conditions or not authorized.

(b) **Petition for recommendation to revise SIP, public notice, and Council hearing.**

(1) Upon a determination to authorize but prior to authorization, the applicant shall file a petition with the DEQ

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seeking a hearing and recommendation by the Air Quality Council for a corresponding revision to the SIP.

~~(2) At least 30 days prior to a hearing before the Air Quality Council on the petition, the applicant shall notify the public by prominent advertisement in a newspaper of general circulation in the county in which the source is located:~~

- ~~(A) that a SIP petition has been filed~~
- ~~(B) that the application, petition and the DEQ analysis thereof are available, for 30 calendar days in at least one location in the county where the source is located for public review, and~~
- ~~(C) of the time, date and place of the hearing before the Air Quality Council and of a 30 day opportunity to submit written comments to the DEQ and/or the opportunity to comment at the hearing.~~

(2) The applicant shall notify the public of the public hearing for an alternative emissions reduction plan by methods contained in OAC 252:4-7-13.

(3) The public notice, as specified, will be sufficient to notify all sub-state entities and their representatives of the proposed recommendation for SIP revision.

(4) At such a hearing before the Air Quality Council, the applicant shall bear the burden of proof.

(c) **Major source.** In the case of a major source, as defined by the Federal Clean Air Act, that might impact the air quality of a neighboring State, the comment period for that State is extended to a 60 day period as required by Section 126 of the Federal Clean Air Act, 42 U.S.C. Section 7426.

~~(d) **Public notice-Plan authorization.** Following receipt of the Air Quality Council's recommended revision of the SIP, the DEQ shall issue the plan authorization and the applicant shall publish public notice of that fact in a newspaper of general circulation in the county in which the source is located.~~

## 252:100-11-7. Duty to comply

(a) Upon issuance of the authorization for the alternative emissions reduction plan by the DEQ, the owner or operator shall be bound by the terms and conditions therein.

(b) Any owner or operator who violates the terms or conditions in the authorized plan shall be subject to enforcement under the Oklahoma Clean Air Act.

[OAR Docket #03-704; filed 4-21-03]

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

[OAR Docket #03-706]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

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

Part 7. Specific Operations  
252:100-39-41 [AMENDED]  
252:100-39-41.1 NEW]

### Subchapter 43. ~~Sampling and Testing Methods~~ Testing, Monitoring and Recordkeeping

Part 1. General Provisions  
252:100-43-1 [AMENDED]  
252:100-43-1.1 [NEW]  
252:100-43-1.2 [NEW]  
252:100-43-2 [AMENDED]  
252:100-43-3 [AMENDED]  
252:100-43-4 [NEW]  
252:100-43-5 [NEW]  
252:100-43-6 [NEW]  
252:100-43-7 [NEW]

### Part 3. Specific Methods

252:100-43-15 [AMENDED AND RENUMBERED TO 252:100-39-41.1]

### Subchapter 45. Monitoring of Emissions [REVOKED]

252:100-45-1 [REVOKED]  
252:100-45-2 [AMENDED AND RENUMBERED TO 252:100-43-4]  
252:100-45-3 [AMENDED AND RENUMBERED TO 252:100-43-7]  
252:100-45-4 [REVOKED]  
252:100-45-5 [REVOKED]

### AUTHORITY:

Environmental Quality Board; 27A O.S. § 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S. § 2-5-101, *et seq.*

### DATES:

#### Comment period:

March 18, 2002 through April 17, 2002  
June 17, 2002 through July 17, 2002  
September 16 2002, through October 16, 2002  
November 14, 2002

#### Public hearing:

April 17, 2002, July 17, 2002, October 16, 2002, and November 14, 2002

#### Adoption:

November 14, 2002

#### Submitted to Governor:

November 22, 2002

#### Submitted to House:

November 22, 2002

#### Submitted to Senate:

November 22, 2002

#### Gubernatorial approval:

January 2, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

#### Final adoption:

March 25, 2003

#### Effective:

June 1, 2003

#### SUPERSEDED EMERGENCY ACTIONS:

None

#### INCORPORATIONS BY REFERENCE:

None

#### ANALYSIS:

Proposed revisions to Subchapter 39, Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas; Subchapters 43, Sampling and Testing Methods, and Subchapter 45, Monitoring of Emissions.

These changes are being proposed as a single action by the Environmental Quality Board. The proposals will merge the requirements of OAC 252:100-45, Monitoring of Emissions, into Subchapter 43 and then revoke Subchapter 45. They will also revoke Section 252:100-43-15 and include its requirement in a new section in Subchapter 39, 39-41.1 and amend section 39-41 to reflect this change.

These changes clarify the conditions under which the Air Quality Division Director may exercise the authority to require monitoring, testing and recordkeeping; and simplify and clarify the monitoring, testing and recordkeeping requirements for sources subject to the Air Quality Rules in Oklahoma.

#### CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2003.

**SUBCHAPTER 39. EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCs) IN NONATTAINMENT AREAS AND FORMER NONATTAINMENT AREAS**

**PART 7. SPECIFIC OPERATIONS**

**252:100-39-41. Storage, loading and transport/delivery of VOCs**

(a) **Storage of VOCs in vessels with storage capacities greater than 40,000 gallons.** Each vessel with a capacity greater than 40,000 gal (151 m<sup>3</sup>) which stores gasoline or any VOC shall be a pressure vessel capable of maintaining working pressures that prevent the loss of VOC vapor or gas to the atmosphere or shall be equipped with one or more of the following vapor control devices.

(1) An external floating roof, that consists of a pontoon-type or double-deck type cover or a fixed roof with an internal-floating cover. The cover shall rest on the surface of the liquid contents at all times (i.e., off the leg supports), except during initial fill, when the storage vessel is completely empty, or during refilling. When the cover is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible. The floating roof shall be equipped with a closure seal, or seals, to close the space between the cover edge and vessel wall. Floating roofs are not appropriate control devices if the VOCs have a vapor pressure of 11.1 psia (76.6 kPa) or greater under actual conditions. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place. Closure seals for fixed roof vessels with an internal-floating cover shall meet the requirements of 252:100-39-30(c)(1)(B)(i) and (ii). Closure seals for vessels with external floating roofs shall meet the requirements of 252:100-39-30(c)(1)(B)(i), (ii), and (iii).

(2) A vapor-recovery system that consists of a vapor-gathering system capable of collecting 90 percent by weight or more of the uncontrolled VOCs that would otherwise be emitted to the atmosphere and a vapor-disposal system capable of processing VOCs to prevent emissions in excess of 6.68 x 10<sup>-4</sup> lb/gal (80 mg/l) of VOCs transferred. All vessel gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(3) Other equipment or methods that are of equal efficiency for purposes of air pollution control may be used when approved by the Division Director and in concert with federal guidelines.

(b) **Storage of VOCs in vessels with storage capacities of 400-40,000 gallons.**

(1) Each gasoline or other VOC storage vessel with a nominal capacity greater than 400 gal (1.5 m<sup>3</sup>) and less than 40,000 gal (151 m<sup>3</sup>) shall be equipped with a submerged fill pipe or be bottom filled.

(2) The displaced vapors from each storage vessel with an average daily throughput of 30,000 gal (113,562 l) or greater which stores gasoline or other VOCs shall be processed by a system that has a total collection efficiency no less than 90 percent by weight of total VOCs in the vapors.

(A) The vapor recovery system shall include:

(i) a vapor-tight return line from the storage vessel to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline or VOCs can be transferred into the storage vessel; or,

(ii) other equipment that has a total collection efficiency no less than 90 percent by weight of the total VOCs in the displaced vapor if approval is obtained from the Division Director prior to start of construction.

(B) The requirements for vapor collection of displaced vapors shall not apply to operations that are not major sources.

(c) **Loading of VOCs.**

(1) Each VOC loading facility with an annual throughput of 120,000 gal (454,249 l) or greater or storage capacity greater than 10,000 gal (38 m<sup>3</sup>) shall be equipped with a vapor-collection and/or disposal system.

(2) While VOCs are loaded through the hatches of a transport vessel, a pneumatic, hydraulic or mechanical means shall be provided to ensure a vapor-tight seal at the hatch.

(3) A means shall be provided to prevent VOC drainage from the loading device when it is removed from the transport vessel, or to accomplish complete drainage before removal.

(4) When loading is by means other than hatches, all loading and vapor lines shall be equipped with fittings that make vapor-tight connections and which close automatically when disconnected.

(5) The vapor collection and/or disposal portion of the system shall consist of one or more of the elements listed in 252:100-39-41(c)(5)(A) through 252:100-39-42(c)(5)(C) in addition to bottom loading or submerged fill of transport vessels. Storage vessels at service stations and bulk plants may be used for intermediate storage prior to recovery/disposal of vapors as specified in 252:100-39-41(c)(5)(A) through 252:100-39-41(c)(5)(C) if they are designed to prevent the release of vapors during use.

(A) An absorption/adsorption system or condensation system that has a minimum recovery efficiency of 90 percent by weight of all the VOC vapors and gases entering such disposal system.

(B) A vapor handling system which directs all vapors to a fuel gas incineration system with a minimum disposal efficiency of 95 percent.

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- (C) Other equipment that has at least a 90 percent efficiency, provided plans for such equipment are approved by the Division Director.
- (6) Subsection 252:100-39-41(c) shall apply to any facility that loads VOCs into any transport vessel designed for transporting VOCs.
- (d) **Transport/delivery.**
- (1) The vapor-laden delivery vessel shall meet one of the following requirements.
- (A) The delivery vessel must be designated and operated to be vapor tight except when sampling, gauging, or inspecting.
- (B) The delivery vessel must be equipped and operated to deliver the VOC vapors to a vapor recovery/disposal system.
- (2) No owner or operator shall allow a delivery vessel to be filled at a facility unable to receive displaced VOC vapors nor service vessels unable to deliver displaced vapors except for vessels and facilities exempted in 252:100-39-41(b) and 252:100-39-41(c).
- (3) Testing of the tank trucks for compliance with the vapor tightness requirements must be consistent with Appendix "B" EPA Guideline Series Document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA 450/2-78-051, or an equivalent method as determined by the Division Director.
- (e) **Additional requirements for Tulsa County.**
- (1) **Applicability.** This subsection applies only in Tulsa County.
- (2) **Storage of VOCs.**
- (A) **2,000 - 40,000 gallons capacity.** Each storage vessel with a nominal capacity greater than 2,000 gal (7.6 m<sup>3</sup>) and less than 40,000 gal (151 m<sup>3</sup>) that stores gasoline or other VOCs or each storage vessel located at a facility that dispenses more than 120,000 gal/yr of gasoline or other VOCs, in addition to being equipped with a submerged fill pipe or being bottom loading, shall be equipped with a vapor control system. The vapor control system shall have an efficiency of no less than 90 percent by weight of the VOCs contained in the displaced vapors and shall be equipped with a pressure relief valve in the atmospheric vent system which maintains a pressure of 16 oz/in.<sup>2</sup> and 1/2 oz/in.<sup>2</sup> vacuum. The vapor recovery system shall include one or more of the following.
- (i) A vapor-tight return line from the storage vessel to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline or VOCs can be transferred into the storage vessel (i.e., popped connectors from the storage vessel to the delivery vessel.).
- (ii) A float vent valve assembly installed in the vapor return/vent line on new and existing dual point installations; however, for coaxial installations on existing stations, a vent sleeve extending 6 in. (15 cm) below the top of the vessel will be allowed. Sleeves may be equipped with a 1/16 in. (0.16 cm) air bleed hole.
- (iii) A vapor recovery line with a cross-sectional area that is at least half of the cross-sectional area of the liquid delivery line.
- (iv) Other equipment that has a total collection efficiency no less than 90 percent by weight of the total VOCs in the displaced vapor if approved by Division Director prior to start of construction.
- (B) **Applicability.**
- (i) Any vessel with a capacity greater than 2,000 gal (7.6 m<sup>3</sup>) or any vessel located at a facility that dispenses more than 120,000 gal/yr (454,249 l/yr) shall be and will always remain subject to 252:100-39-41(e)(2). (effective February 12, 1990).
- (ii) Exemptions to 252:100-39-41(e)(2) may be granted if the owner or operator shows to the satisfaction of the Division Director that the vessel is used exclusively for agricultural purposes.
- (C) **Emission testing.** If emission testing is conducted, the appropriate test methods selected from EPA Methods 1 through 4, 18, 21, 25, 25A and 25B shall be utilized.
- (D) **Compliance.** Compliance with 252:100-39-41(e)(2) shall be accomplished by the owner or operator of affected facilities by December 31, 1986.
- (E) **Certification.** The owner or operator of a facility shall obtain, by whatever means practicable, certification from the owner or operator of the transport/delivery vessels that all deliveries of gasoline or other VOCs made to their 400-gallon to 40,000-gallon storage facility located in Tulsa County shall be made by transport/delivery vessels that comply with the requirements contained in 252:100-39-41(e)(4). Compliance with 252:100-39-41(e)(2) shall be accomplished by owners or operators of affected facilities no later than December 31, 1990. (Effective February 12, 1990)
- (3) **Loading of VOCs.** In addition to those requirements contained in 252:100-39-41(c), stationary loading facilities shall be checked annually in accordance with EPA Test Method 21, Leak Test. Leaks greater than 5,000 ppmv shall be repaired within 15 days. Facilities shall retain inspection and repair records for at least two years.
- (4) **Transport/delivery vessel requirements.** In addition to the requirements contained in 252:100-39-41(d), facilities located in Tulsa County must meet the following requirements.
- (A) **Maintenance.**
- (i) The delivery vessel must be maintained so that it is vapor tight except when sampling, gauging, or inspecting. These activities shall not occur while the vehicle is loading or unloading or is in a pressurized state.
- (ii) The delivery vessel must be equipped, maintained, and operated to receive vapors from sources identified in 252:100-39-41(b)(1) and

252:100-39-41(b)(2) and retain these and all other vapors until they are delivered into an authorized vapor recovery/disposal system.

(iii) Vessels with defective equipment such as boots, seals, and hoses, or with other deficiencies that would impair the vessels' ability to retain vapors or liquid shall be repaired within 5 days.

(iv) The certified testing facility must certify to the approving agency that the proper testing and repairs have occurred in accordance with 252:100-39-41(e)(4)(B)(i). The vessel must also display on the rear panel a tag showing the date of the pressure test.

(v) No owner or operator shall allow a delivery vessel to be filled at a facility unable to receive displaced VOCs nor service vessels unable to deliver displaced vapors except for vessels/facilities exempted in 252:100-39-41(b). Terminal owners shall not fill vessels that do not display a current tag.

(vi) Delivery vessels may be inspected by representatives of the DEQ in order to determine their state of repair. Such a test may consist of a visual inspection or a vapor test with vapors not to exceed 5,000 ppmv. Failure of a vapor test shall require the owner or operator to make the necessary repairs within 10 days. Failure to certify within 10 days of a vapor test that the necessary repairs have been made shall subject the owner or operator to sanctions. Upon certification of repairs, the vessel will be allowed to resume normal operation.

**(B) Testing requirements.**

**(i) Pressure test.**

(I) Delivery vessels, delivering or receiving gasoline must be tested one time per year for vapor tightness. The vapor tightness test must be consistent with Appendix "A" EPA Guideline Series Document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems", EPA 450/2-78-051. Tests shall be performed by the owner or a transport service company. Test methods used to test these vessels by owners or testing companies must be approved for use by the Division Director.

(II) The vessel shall be considered to pass the test prescribed in 252:100-39-41(e)(4)(B)(i)(I) when the test results show that the vessel and its vapor collection systems do not sustain a pressure change of more than 3 in. H<sub>2</sub>O. There shall be no avoidable visible liquid leaks.

(ii) **Vapor test.** Testing of the tank trucks for compliance with vapor tightness requirements as required under 252:100-39-41(e)(4)(A)(vi) must be consistent with Appendix "B" EPA Guideline Series Document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and

Vapor Collection Systems", EPA 405/2-78-051, as modified for this purpose ~~and contained in 252:100-43-15 Section 252:100-39-41.1.~~ The requirements of 252:100-39-41(e) took effect December 15, 1988.

**252:100-39-41.1. Gasoline vapor leak detection method by combustible gas detector**

**(a) Principle.** A combustible gas detector is used to indicate any incidence of leakage from gasoline truck tanks and vapor control systems. This qualitative monitoring procedure is an enforcement tool to confirm the continuing existence of leak-tight conditions.

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

**(1) "Truck tank"** means any container, including associated pipes and fittings, that is used for the transport of gasoline.

**(2) "Truck tank vapor collection equipment"** means any piping, hoses, and devices on the truck tank used to collect and route the gasoline vapors in the tank to the bulk terminal, bulk plant, or service station vapor control system.

**(3) "Vapor control system"** means any piping, hoses, equipment, and devices at the bulk terminal, bulk plant, or service station, which is used to collect, store, and/or process gasoline vapors.

**(c) Applicability.** The gasoline vapor leak detection procedure by combustible gas detector is applicable to determining the leak-tightness of gasoline truck tanks during loading without taking the truck tank out of service. The method is applicable only if the vapor control system does not create back-pressure in excess of the pressure limits of the truck tank compliance leak test. For vapor control systems, this method is applicable to determining leak-tightness at any time.

**(d) Apparatus and specifications.**

**(1) Manometer.** Liquid manometer, or equivalent, capable of measuring up to 6250 pascals (25 inches H<sub>2</sub>O) gauge pressure with +25 pascals (0.1 inch H<sub>2</sub>O) precision shall be used.

**(2) Combustible gas detector.** A portable hydrocarbon gas analyzer with associated sampling line and probe having the following specification shall be used.

**(A) Safety.** The detector shall be certified as safe for operation in explosive atmospheres.

**(B) Range.** The minimum range for the detector shall be 0-100 percent of the lower explosive limit (LEL) as propane.

**(C) Probe diameter.** The sampling probe shall have an internal diameter of 0.625 cm (1/4 inch).

**(D) Probe length.** The probe sampling line shall be of sufficient length for easy maneuverability during testing.

**(E) Response time.** The response time for full-scale deflection shall be less than 8 seconds for detector with sampling line and probe attached.

**(e) Test procedure.**

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- (1) **Pressure.** Place a pressure tap in the terminal, plant, or service station vapor control system, as close as possible to the connection with the truck tank. Record the pressure periodically during testing.
- (2) **Calibration.** Calibrate the combustible gas detector with 2.2 percent propane by volume in air for 100 percent LEL response.
- (3) **Monitoring procedure.** During loading or unloading, check the periphery of all potential sources of leakage of the truck tank and of the terminal, plant, or service station vapor collection system with a combustible gas detector.
  - (A) **Probe distance.** The probe inlet shall be 2.5 cm from the potential leak source.
  - (B) **Probe movement.** Move the probe slowly (2.0 cm/second). If there is any meter deflection at a potential leak source, move the probe to locate the point of highest meter response.
  - (C) **Probe position.** As much as possible, the probe inlet shall be positioned in the path of (parallel to) the vapor flow from a leak.
  - (D) **Wind.** Attempt as much as possible to block the wind from the area being monitored.
- (4) **Recording.** Record the highest detector reading and location for each incidence of leakage.

## SUBCHAPTER 43. SAMPLING AND TESTING METHODS TESTING, MONITORING AND RECORDKEEPING

### PART 1. GENERAL PROVISIONS

#### 252:100-43-1. Purpose

The purpose of this Subchapter is to provide general requirements on air pollution sampling and for testing, monitoring and recordkeeping.

#### 252:100-43-1.1. Definitions

The following words and terms, when used in this Subchapter shall have the following meaning:

**"Method"** means a formalized program for the measurement, analysis, and reporting of the physical and chemical properties of a process.

**"Monitoring"** means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Recordkeeping may be considered monitoring where such records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). Monitoring may include one or more than one of the following data collection techniques, where appropriate for a particular circumstance:

- (A) Continuous emission or opacity monitoring systems.

- (B) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.
- (C) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).
- (D) Maintenance and analysis of records of fuel or raw materials usage
- (E) Recording results of a program to conduct specific operation and maintenance procedures.
- (F) Verification of emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.
- (G) Visible emission observations.
- (H) Any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

**"Test"** means the collection of data resulting from the execution of a method.

#### 252:100-43-1.2. Applicability

Requirements of this Subchapter apply to any testing, monitoring or recordkeeping activity, including permits, compliance, performance tests and enforcement, conducted at any stationary source. When other applicable federal and state requirements are more stringent than those of this Subchapter, then the more stringent requirements shall apply. Upon written request, the Director will make a determination whether any other applicable federal or state regulation is more stringent than those of this Subchapter.

#### 252:100-43-2. ~~Test procedures~~ Testing and monitoring

All ~~tests~~ testing and monitoring shall be made and the results ~~calculated~~ conducted in accordance with ~~test procedures approved by the Executive Director~~ the methods described in this Subchapter. All tests shall be made under the direction of a person qualified by training and/or experience in the appropriate field of air pollution control. The data from any required testing or monitoring not conducted in accordance with the provisions of this Subchapter shall not be considered valid by the Director.

#### 252:100-43-3. ~~Conduct of tests~~ Requirement to test

(a) The ~~Executive~~ Director may, at his or her discretion, conduct tests, including stack test, of ~~emissions of air contaminants from any air contaminant source within the state of Oklahoma.~~ Upon the written request of the Department, the person responsible for Director, the owner or operator of the source to be tested shall provide all necessary ports in stacks or ducts to provide compliance with procedures approved by the Executive Director, and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emission of air

contaminants deemed necessary by the Director for the completion of the test and the safety of the testing personnel.

(b) The Director may require the owner or operator of a source to conduct test(s) at the owner or operator's expense:

- (1) when required by a federal regulation,
- (2) as part of an administrative order,
- (3) as part of a compliance plan,
- (4) before the issuance of an operating permit,
- (5) as part of an operating permit,
- (6) to verify compliance with any emission standard or permitted emission limit, or
- (7) to prepare or verify an emission inventory.

(c) The operator of a source required to conduct an EPA Reference Method stack test by the Director shall submit a written pre-test plan for the Director's approval thirty (30) calendar days prior to the test or provide information for a pre-test plan in the event the Director elects to perform the test.

(d) The owner or operator of a source required to perform an EPA Reference Method stack test shall notify the Director in writing thirty (30) calendar days prior to the planned date of the test to provide an opportunity for DEQ personnel to observe the test.

**252:100-43-4. Monitoring required**

To determine compliance with emissions limitations or standards the Director may require the owner or operator of any source in the state of Oklahoma to install, maintain and operate monitoring equipment in compliance with any methods the Director shall specify.

**252:100-43-5. Acceptable methods**

Acceptable methods include, as applicable, methods required by rule or permit, ASTM methods, and methods contained in 40 CFR parts 51, 60, 61 and 75. The owner or operator may modify an acceptable method or use an alternate method, if the owner or operator can demonstrate to the satisfaction of the Director that:

- (1) the proposed modification or alternative method is necessary;
- (2) the results of the proposed modification or alternative method will be at least as accurate as the unmodified method for the purpose intended; and
- (3) such modification or alternative method is allowed by any applicable federal rule.

**252:100-43-6. Credible evidence**

For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any provision of the Oklahoma implementation plan, nothing shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.

**252:100-43-7. Records and reports required**

(a) The Director may require the owner or operator of a source to record and maintain records on emissions and other data to demonstrate compliance with any federal or state emission limit or standard, or any requirement set forth in a valid permit. Required records shall be maintained in a readily viewable format or medium, and kept on-site or at a location approved by the Director for a period of not less than two years from the day of recording. Said records shall be made available for inspection upon the request of DEQ personnel.

(b) Reports required by the Director shall be recorded and submitted on forms provided by, or described by, the Director. Unless different units of measure or procedure are prescribed by the Director, or by an applicable rule or permit requirement, the units of measure and procedures described in paragraphs (1) through (5) of this subsection shall be used for any report required by the Director.

(1) Emissions of particulate matter shall be recorded and reported in:

- (A) pounds per hour,
- (B) pounds per hour as related to the process weight rate,
- (C) pounds per 100 pounds of refuse charged in incinerators, and
- (D) tons per year.

(2) Emissions of sulfur dioxide shall be recorded and reported in:

- (A) pounds per hour,
- (B) pounds per million BTU heat input for fuel-burning equipment, and
- (C) tons per year.

(3) Emissions of oxides of nitrogen shall be recorded and reported in:

- (A) pounds per hour,
- (B) pounds per million BTU heat input for fuel burning equipment,
- (C) pounds per million dry standard cubic foot for fuel-burning equipment using gas fuel, and
- (D) tons per year.

(4) Visible emissions monitored by instrumentation shall be measured continuously and records kept indicating total minutes per day in which stack discharge effluent exceeds 20 percent opacity and a rolling six (6) minute average opacity.

(5) The sulfur content of fuels, as burned, shall be recorded and reported in:

- (A) grains per dry standard cubic foot for gas fuel,
- (B) grains per gallon for liquid fuel, and
- (C) percent by weight for solid fuel.

**PART 3. SPECIFIC METHODS**

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## 252:100-43-15. Gasoline vapor leak detection procedure by combustible gas detector [AMENDED AND RENUMBERED TO 252:100-39-41.1]

(a) **Principle.** A combustible gas detector is used to indicate any incidence of leakage from gasoline truck tanks and vapor control systems. This qualitative monitoring procedure is an enforcement tool to confirm the continuing existence of leak-tight conditions.

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

(1) "Truck tank" means any container, including associated pipes and fittings, that is used for the transport of gasoline.

(2) "Truck tank vapor collection equipment" means any piping, hoses, and devices on the truck tank used to collect and route the gasoline vapors in the tank to the bulk terminal, bulk plant, or service station vapor control system.

(3) "Vapor control system" means any piping, hoses, equipment, and devices at the bulk terminal, bulk plant, or service station, which is used to collect, store, and/or process gasoline vapors.

(c) **Applicability.** The gasoline vapor leak detection procedure by combustible gas detector is applicable to determining the leak tightness of gasoline truck tanks during loading without taking the truck tank out of service. The method is applicable only if the vapor control system does not create back pressure in excess of the pressure limits of the truck tank compliance leak test. For vapor control systems, this method is applicable to determining leak tightness at any time.

(d) **Apparatus and specifications.**

(1) **Manometer.** Liquid manometer, or equivalent, capable of measuring up to 6250 pascals (25 inches H<sub>2</sub>O) gauge pressure with +25 pascals (0.1 inch H<sub>2</sub>O) precision shall be used.

(2) **Combustible gas detector.** A portable hydrocarbon gas analyzer with associated sampling line and probe having the following specification shall be used.

(A) **Safety.** The detector shall be certified as safe for operation in explosive atmospheres.

(B) **Range.** The minimum range for the detector shall be 0-100 percent of the lower explosive limit (LEL) as propane.

(C) **Probe diameter.** The sampling probe shall have an internal diameter of 0.625 cm (1/4 inch).

(D) **Probe length.** The probe sampling line shall be of sufficient length for easy maneuverability during testing.

(E) **Response time.** The response time for full scale deflection shall be less than 8 seconds for detector with sampling line and probe attached.

(e) **Test procedure.**

(1) **Pressure.** Place a pressure tap in the terminal, plant, or service station vapor control system, as close as possible to the connection with the truck tank. Record the pressure periodically during testing.

(2) **Calibration.** Calibrate the combustible gas detector with 2.2 percent propane by volume in air for 100 percent LEL response.

(3) **Monitoring procedure.** During loading or unloading, check the periphery of all potential sources of leakage of the truck tank and of the terminal, plant, or service station vapor collection system with a combustible gas detector.

(A) **Probe distance.** The probe inlet shall be 2.5 cm from the potential leak source.

(B) **Probe movement.** Move the probe slowly (2.0 cm/second). If there is any meter deflection at a potential leak source, move the probe to locate the point of highest meter response.

(C) **Probe position.** As much as possible, the probe inlet shall be positioned in the path of (parallel to) the vapor flow from a leak.

(D) **Wind.** Attempt as much as possible to block the wind from the area being monitored.

(4) **Recording.** Record the highest detector reading and location for each incidence of leakage.

## SUBCHAPTER 45. MONITORING OF EMISSIONS [REVOKED]

### 252:100-45-1. Purpose [REVOKED]

The purpose of this Subchapter is to outline the basic requirements for monitoring of emissions and their recording and reporting.

### 252:100-45-2. Monitoring equipment required [AMENDED AND RENUMBERED TO 252:100-43-4]

The Executive Director may require the owner or operator of any air contaminant source to:

(1) install, use, and maintain such monitoring equipment;

(2) sample such emissions in accordance with methods as the Executive Director shall prescribe;

(3) establish and maintain such records; and

(4) make such periodic emission reports as required in 252:100-45-3.

### 252:100-45-3. Records required [AMENDED AND RENUMBERED TO 252:100-43-7]

Records and reports as the Executive Director shall prescribe on air contaminants or fuel shall be recorded, compiled, and submitted on forms furnished by the Executive Director. (The procedures below are examples of such requirements.)

(1) Emissions of particulate matter, sulfur dioxide, and oxides of nitrogen shall be expressed as follows:

(A) in pounds per hour and pounds per million BTU of heat input for fuel-burning equipment;

(B) in pounds per hour and pounds per 100 pounds of refuse burned for incinerators; and

(C) in pounds per hour and in pounds per hourly process weight or production rate or in terms of some other easily measured and meaningful process unit specified by the Executive Director.

(2) Sulfur dioxide and oxides of nitrogen emission data shall be averaged over a 24-hour period and shall be summarized monthly. Daily averages and monthly summaries shall be submitted to the Executive Director biannually. Data should be calculated daily and available for inspection at any time.

(3) Particulate matter emissions shall be sampled and submitted biannually.

(4) Visible emissions shall be measured continuously and records kept indicating total minutes per day in which stack discharge effluent exceeds 20 percent opacity. Data should be summarized biannually. Current daily results shall be available for inspection at any time.

(5) The sulfur content of fuels, as burned, except natural gas, shall be determined in accordance with current recognized ASTM procedures. Daily and monthly averages shall be submitted biannually. Daily records shall be kept current and be available for inspection.

**252:100-45-4. Compliance certifications [REVOKED]**

Notwithstanding any other provision in the State of Oklahoma implementation plan approved by the Administrator, for the purpose of submission of compliance certifications an owner or operator is not prohibited from using monitoring as required under 252:100-8-6(a)(3) and incorporated into a federally enforceable operating permit in addition to any specified compliance methods.

*AGENCY NOTE: Amended and renumbered to OAC 252:100-43-6.*

**252:100-45-5. Enforceability [REVOKED]**

Notwithstanding any other provision in the State of Oklahoma implementation plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at the source:

(A) A monitoring method approved for the source pursuant to 252:100-8-6(a)(3) and incorporated in a federally enforceable operating permit.

(B) Compliance methods specified in the applicable plan.

(2) The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

(A) Any federally enforceable monitoring or testing methods, including those in 40 CFR parts 51, 60, 61 and 75.

(B) Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method in (1) or (2) (A) of this section.

*AGENCY NOTE: Amended and renumbered to OAC 252:100-43-6.*

[OAR Docket #03-706; filed 4-21-03]

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

[OAR Docket #03-705]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 39. Emission of Volatile Organic Compounds (VOCs) In Nonattainment Areas and Former Nonattainment Areas  
Part 7. Specific Operations  
252:100-39-47 [AMENDED]  
Appendix N. Specialty Coatings VOC Content Limits [NEW]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S. § 2-5-101, *et seq.*

**DATES:**

**Comment period:**

December 17, 2001 through January 16, 2002  
March 15, 2002 through April 17, 2002  
June 25, 2002

**Public hearing:**

January 16, 2002, April 17, 2002 and June 25, 2002

**Adoption:**

June 25, 2002

**Submitted to Governor:**

July 1, 2002

**Submitted to House:**

July 1, 2002

**Submitted to Senate:**

July 1, 2002

**Gubernatorial approval:**

July 22, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas  
Part 7. Specific Operations  
252:100-39-47 [AMENDED]  
Appendix N. Specialty Coatings VOC Content Limits [NEW]

**Gubernatorial approval:**

July 22, 2002

**Register publication:**

19 Ok Reg 2883

**Docket number:**

02-1276

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

In the past, the U.S. Environmental Protection Agency (EPA) designated Tulsa County a nonattainment area for the national ozone standard. The EPA required the State of Oklahoma to develop a plan to enable Tulsa County to achieve and maintain compliance with the ozone standard. As part of this plan, aerospace manufacturing and rework facilities in Tulsa County were required by state rule to reduce VOC emissions from coating operations by implementing Reasonably Available Control Technology (RACT). Although EPA has prepared presumptive RACTs for many industries and published them in Control Techniques Guidelines (CTG), at the time Tulsa was a nonattainment area for ozone, there was no federal presumptive RACT for

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the control of VOC emissions from this industry. Instead, each facility in the Tulsa area was required to develop its own plan for approval by the DEQ's predecessor and EPA in the form of a source-specific State Implementation Plan revision. These individual plans were known as Alternate Reasonably Available Control Technology (ARACT). Section 47 of Subchapter 39 contains the requirements for individual ARACT plans.

Though Tulsa regained attainment status for ozone in 1990, Tulsa County aerospace manufacturing, rework, and repair operations with the potential to emit greater than 10 tons/year of VOC from coating operations remain subject to individual ARACT plans. In 1997 EPA established presumptive RACT for the aerospace manufacturing and rework industry. Because EPA's CTG is in the form of a guideline it requires redrafting in the format of an enforceable standard. The proposed changes to Section 47 of Subchapter 39 will replace the existing individual ARACTs with the requirements contained in EPA's CTG titled: Control of Volatile Organic Compounds Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations, EPA-453/R-97-004, December 1997. The proposed changes provide uniformity of treatment for all of the industries subject to the standard. The proposed changes also eliminate inconsistencies between the rule and aerospace NESHAP 40 CFR 63 subpart GG to which many of these same sources are subject. Because the individual ARACTs are cumbersome to amend and difficult to interpret, the proposed changes should result in a more enforceable rule.

In addition, a new Appendix N is proposed. Appendix N lists the VOC content limits that constitute RACT for specialty coatings. The appendix also includes the formula used to calculate VOC content of specialty coatings when determining compliance with the VOC content limits.

## SUMMARY OF DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

The proposed revisions are to insure that Section 47 of Subchapter 39 is as consistent as possible with the analogous federal rule.

### CONTACT PERSON:

Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 794-6800

## 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 JUNE 1, 2003:

### SUBCHAPTER 39. EMISSION OF VOLATILE ORGANIC COMPOUNDS(VOCs) IN NONATTAINMENT AREAS AND FORMER NONATTAINMENT AREAS

#### PART 7. SPECIFIC OPERATIONS

##### 252:100-39-47. Control of VOC emissions from aerospace industries coatings operations

###### (a) Applicability.

~~(1) This Section applies to all aerospace facilities located in Tulsa County. Sources once subject to this Section are always subject.~~

~~(2) This Section does not apply to individual coating formulations that, when aggregated, do not exceed 55 gal/yr for the facility.~~

~~(3) Facilities with a potential to emit 10 tons/year or less of VOC from coatings operations are exempt from this Section.~~

(1) Except as noted in OAC 252:100-39-47(a)(2) and (3), this Section applies to existing or new aerospace vehicle and component coating operations at aerospace manufacturing, rework, or repair facilities located in Tulsa County that have the potential to emit 10 TPY or more of VOC from coating operations. For purposes of this Section, coating operations include associated cleaning operations as specified in OAC 252:100-39-47(d)(4) and surface preparation.

(2) This Section does not apply to manufacturing, rework, or repair operations involving space vehicles or rework or repair operations performed on antique aerospace vehicles or components.

(3) This Section does not apply to the following activities: research and development, quality control, laboratory testing, and electronic parts and assemblies (except for cleaning and coating of completed assemblies).

(b) References to 40 CFR. References to the aerospace NESHAP 40 CFR 63 subpart GG refers to that subpart as it existed on July 1, 2001.

(b)c) Definitions. The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise. Additional definitions for terms used in this Section are found in § 63.742 and Appendix A of the aerospace NESHAP 40 CFR 63 subpart GG, which is adopted by reference in OAC 252:100-41-15(b).

(1) "Aerospace" means the industries, air bases and depots that manufacture, rework, or repair aircraft or military equipment components for either commercial or military customers.

(2) "Aircraft" means any machine designed to travel through the earth's atmosphere. This group includes but is not limited to airplanes, balloons, dirigibles, drones, helicopters, missiles, and rockets.

(3) "Alternate reasonably available control technology (ARACT)" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility as determined on a case-by-case basis.

(4) "Coating" means a material which covers a surface which alters the surface characteristics and from which VOCs can be emitted during the application and/or curing process.

(5) "CTG" means the Control Techniques Guidance Document "Control of Volatile Organic Emissions From Existing Stationary Sources, Volume VI: Surface Coating of Miscellaneous Metal Parts and Products," EPA No. 450/2-78-015.

(6) "Facility" means all of the pollutant emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control.

(7) "Low VOC coating (LVOCC)" means a coating that contains less VOC than the conventional coatings

used by the industry. Low VOC coatings include waterborne, higher solids, electrodeposition, and powder coatings.

(2) "Chemical milling maskant" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are not included. Maskants that are defined as specialty coatings are not included under this definition.

(3) "Operating parameter value" means a minimum or maximum value established for a control equipment or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has continued to comply with an applicable emission limitation.

(84) "Reasonably available control technology (RACT)" or "RACT" means control technology that is reasonably available considering technological and economic feasibility and the need to impose such controls to attain and maintain a National Ambient Air Quality Standard.

(5) "Specialty coating" means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

(e) **General requirements.**

(1) All affected facilities shall develop an emissions reduction plan as set forth in 252:100-39-47(d). This plan, upon approval, shall constitute ARACT for that particular facility.

(2) ARACT must be installed and operating as provided in the approved plan no later than January 1, 1991 for existing facilities, unless additional phased compliance dates are approved in the plan.

(3) New and modified sources and coating applications not included in the plan are subject to the permit requirements set forth in 252:100-7 or 252:100-8, and will be submitted to EPA as source-specific SIP revisions, unless one of the following applies:

(A) The new coatings meet the presumptive norm of 3.5 pounds of VOC per gallon less water and exempt compounds.

(B) The total usage of the new coating does not exceed 55 gal/yr of each coating formulation.

(d) **Emissions reduction plan.**

(1) **Plan development.** Each plan shall include:

(A) a detailed, reasoned and exhaustive review of each source of emissions within the facility and the entire plant collectively;

(B) identification and quantification of emissions, in terms of pounds per day, of all VOC both before and after the application of ARACT;

(C) a detailed, innovative engineering effort directed toward finding alternative air management schemes that can be incorporated in order to abate emissions at costs which are reasonable;

(D) a consideration of the level of control that is achievable using available alternative coatings, to include LVOCC for every application;

(E) a demonstration of the level of control achievable using available add on control devices which shall include, at a minimum, the feasibility/infeasibility of carbon adsorption, incineration/flaring, condensation, and a combination of carbon adsorption and incineration/flaring;

(F) a consideration of facility redesign, including recirculation, reduced air flows, consolidation of spray operations, and installation of common control devices for two or more separate coating operations;

(G) a consideration of alternative applications, to improve transfer efficiency, including high-volume-low pressure spray equipment, heated spray guns, and electrostatic spray equipment powder coatings;

(H) an explanation why each source is not a typical coating source covered by the CTG as defined in 252:100-39-47(b);

(I) a cost/benefit analysis for all control technology considered; and,

(J) a detailed compliance schedule that includes the emission limit and/or control techniques for each emission source which together with other relevant considerations, shall be set forth in a separate section of the plan that summarizes and outlines ARACT for the referenced facility.

(2) **Submission of emission reduction plans.** Three copies of the emissions reduction plan shall be submitted to the Division and one shall be submitted to EPA, Region VI.

(3) **Action on plan.** Within 30 days of submittal, or of May 25, 1990, whichever is later, the Division shall, considering any comments submitted by EPA, either approve, modify or disapprove the plan.

(4) **Public hearing.** The Division shall, at the first meeting of the Air Quality Council following the approval, modification, or disapproval of the plan, present at public hearing, the staff's findings and ARACT determination.

(5) **Final approval.** Upon consideration of comments and recommendations from the Council, the owner or operator of the affected facility, the public, and EPA, the DEQ shall, within ten (10) days after the public hearing, issue a final ARACT approval. Final approval shall constitute ARACT for the affected facility.

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- (6) **Compliance.** The owner or operator shall be responsible for installation and operational provisions of the approved ARACT. Any violation of the plan or of its provisions shall constitute a violation of this Section.
- (7) **Submission of SIP revision.** Upon approval by the DEQ, the ARACT determination shall be submitted to EPA as a SIP revision.
- (e) **Reporting and recordkeeping.**
- (1) **Recordkeeping requirements.** The owner or operator shall maintain:
- (A) a material safety data sheet which documents the VOC content, composition, solids content, VOC density and other relevant information regarding each coating and VOC available for use in the affected surface coating processes;
  - (B) information detailing the operational parameters of the coating process sufficient to determine continuous compliance with the applicable control limits;
  - (C) information as to the amounts of each type coating used and the amounts of VOC used for dilution in each coating type for each coating operation;
  - (D) daily usage records for all coatings used that do not comply with the applicable control limits specified in the plan; and,
  - (E) records of any monitoring and testing conducted at an affected facility in accordance with the provisions specified in 252:100-39-47(f).
- (2) **Method of calculating VOC content in coatings.** Records required by 252:100-39-47(e)(1)(A) through 252:100-39-47(e)(1)(E) detailing VOC in pounds per gallon of coating (less water and exempt compounds) shall be calculated as follows:  
$$\text{VOC in lbs/gal of coating} = \frac{W_v W_w W_x}{1 - V_w - V_x}$$
where:
- (A)  $W_v$  = weight of all volatiles;
  - (B)  $W_w$  = weight of water;
  - (C)  $W_x$  = weight of exempt compounds;
  - (D)  $V_w$  = volume fraction of water; and,
  - (E)  $V_x$  = volume fraction of exempt compounds.
- (3) **Maintenance of records.** Records required by 252:100-39-47(e)(1)(A) through 252:100-39-47(e)(1)(E) shall be maintained for at least two years and shall be made available upon request by representatives of the AQD or EPA.
- (4) **Alternative recordkeeping provision.** Alternatively to 252:100-39-47(e)(1) through 252:100-39-47(e)(3), an equivalent recordkeeping provision that satisfies the substantive requirements of 252:100-39-47(e)(1) through 252:100-39-47(e)(3) may be approved under the plan.
- (f) **Testing and monitoring.**
- (1) **Testing.** The Division may require testing at the expense of the owner or operator to establish emission from any particular source or sources. Test methods may include 1-4, 18, 24, 24A, 25A, 25B found in the Appendix A of 40 CFR Part 60, including the procedures found at 40 CFR 60.444.
- (2) **Monitoring.** Monitoring shall be required of any owner or operator who uses add-on control equipment for compliance. Such monitoring shall accurately measure and record operational parameters of all required control devices to ensure the proper functioning of those devices in accordance with design specifications, including:
- (A) the exhaust temperature of direct flame incinerators and/or gas temperature immediately upstream and downstream of any catalyst bed;
  - (B) the total amount of VOCs recovered by carbon adsorption or other VOC recovery system during a calendar month; and,
  - (C) the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities. (252:100-39-47 Effective May 25, 1990)
- (d) **Standards and requirements.**
- (1) **VOC content of coatings.**
- (A) **VOC content limits for specialty coatings.**
- (i) No specialty coatings that contain VOC in excess of the limits specified in Appendix N of this Chapter shall be applied to aerospace vehicles or components. The VOC content of specialty coatings shall include any VOC-containing materials added to the original coating supplied by the manufacturer.
  - (ii) The VOC content limits listed in Appendix N of this Chapter do not apply to touch-up, aerosol, and DOD "classified" coatings.
- (B) **VOC content limits for primers and topcoats.** Each coating operation utilizing primers and topcoats (including self-priming topcoats) that are not specialty coatings listed in Appendix N of this Chapter, shall comply with the VOC content limits contained in § 63.745(c)(2) and (c)(4) of the aerospace NESHAP 40 CFR 63, subpart GG.
- (C) **VOC content limits for chemical milling maskants.** Each chemical milling maskant operation utilizing chemical milling maskants (Type I/II) that are not specialty coatings listed in Appendix N of this Chapter, shall comply with the VOC content limits contained in § 63.747(c)(2) and the exemptions in § 63.747(c)(3) of the aerospace NESHAP 40 CFR 63 subpart GG.
- (D) **Exemption of low volume coating usage.** The requirements of OAC 252:100-39-47(d)(1) do not apply to the use of primers, topcoats, chemical milling maskants, and specialty coatings for which the annual total of each separate formulation used at the facility does not exceed 50 gal and the combined annual total of all such primers, topcoats, chemical milling maskants, and specialty coatings used at the facility does not exceed 200 gal. Primers, topcoats, and chemical milling maskants exempt under OAC 252:100-39-47(a) are not included in the 50 and 200 gal limits.
- (E) **Compliance determination.**

- (i) Coatings used at facilities subject to this Section shall be deemed in compliance when the VOC content of these coatings comply with the requirements of OAC 252:100-39-47(d)(1).
  - (ii) For purposes of determining compliance with emission limits, VOC will be measured by the approved test methods. Where such a method also inadvertently measures compounds that are exempt solvents, an owner or operator may exclude these exempt solvents when determining compliance with an emission standard.
  - (2) **Application equipment.**
    - (A) Each primer or topcoat application operation subject to this Section shall comply with the requirements and exemptions specified in § 63.745(f) of the aerospace NESHAP 40 CFR 63 subpart GG.
    - (B) Specialty coatings are not subject to the equipment requirements of OAC 252:100-39-47(d)(2)(A).
  - (3) **Control equipment.**
    - (A) **Control equipment efficiency.** Each owner or operator may comply with the provisions of OAC 252:100-39-47(d)(1) by using approved air pollution control equipment provided that the control equipment has a combined VOC emissions capture and control equipment efficiency of 81% or greater by weight.
    - (B) **Exemption.** Except for specialty coatings, any primer or topcoat operation that complies with the control requirements in § 63.745(d) or any chemical milling maskant operation that complies with the control requirements of § 63.747(d) of the aerospace NESHAP 40 CFR 63 subpart GG is deemed to be in compliance with the requirements of OAC 252:100-39-47(d)(3).
    - (C) **Compliance determination.** When control equipment is used to comply with the coating standards in OAC 252:100-39-47(d)(1), compliance shall be determined in accordance with § 63.749(d) and (h) of the aerospace NESHAP 40 CFR 63 subpart GG.
  - (4) **Housekeeping measures and solvent cleaning operations.**
    - (A) Housekeeping measures and solvent cleaning operations (hand-wipe cleaning, spray gun cleaning, and flush cleaning) subject to this Section shall comply with the requirements and exemptions contained in § 63.744 of the aerospace NESHAP 40 CFR 63, subpart GG.
    - (B) Housekeeping measures and solvent cleaning operations subject to OAC 252:100-39-47(d)(4)(A) shall be considered in compliance with subparagraph (A) when the requirements in § 63.749(c) of the aerospace NESHAP 40 CFR 63 subpart GG are met.
  - (5) **General standards.** The handling and transfer of primers, topcoats, and chemical milling maskants to or from containers, tanks, vats, vessels, and piping systems shall be handled in a manner that minimizes spills.
- (e) **Monitoring.**
- (1) Each owner or operator who chooses to comply with the VOC content limits of OAC 252:100-39-47(d)(1)(A), (B), and /or (C) by using approved air pollution control equipment shall submit a monitoring plan that specifies the applicable operating parameter value, or range of values, to ensure ongoing compliance with OAC 252:100-39-47(d)(3) of this Section. The monitoring device shall be installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications.
  - (2) Each owner or operator using an enclosed spray gun cleaner shall visually inspect the seals and all other potential sources of leaks at least once per month. Each inspection shall occur while the spray gun cleaner is in operation.
  - (3) Except for specialty coatings, any source that complies with the monitoring requirements of § 63.751 of the aerospace NESHAP 40 CFR 63 subpart GG is deemed to be in compliance with the requirements of OAC 252:100-39-47(e).
- (f) **Recordkeeping requirements.**
- (1) **Coating operations.**
    - (A) Each owner or operator of primer and topcoat application operations or chemical milling maskant application operations shall comply with the recordkeeping requirements of § 63.752 of the aerospace NESHAP 40 CFR 63 subpart GG as appropriate.
    - (B) Each owner or operator of coating operations using specialty coatings listed in Appendix N of this Chapter shall comply with the following recordkeeping requirements.
      - (i) They shall maintain a current list of coatings in use showing category and as-applied VOC content of each coating.
      - (ii) They shall record coating usage on an annual basis. Methods used may include, but are not limited to, inventory records.
  - (2) **Cleaning operations.** Each owner or operator subject to the solvent cleaning operation requirements in OAC 252:100-39-47(d)(4) shall:
    - (A) for hand-wipe cleaning operations keep the records required by § 63.752(b)(2), (3), and/or (4) of the aerospace NESHAP 40 CFR 63 subpart GG as appropriate;
    - (B) for enclosed spray gun cleaning operations keep the records required by § 63.752(b)(5) of the aerospace NESHAP 40 CFR 63 subpart GG.
  - (3) **Control equipment.** Each owner or operator using control equipment under OAC 252:100-39-47(d)(3) shall record monitoring parameters as specified in the monitoring plan required under OAC 252:100-39-47(e)(1).
  - (4) **Exemptions.** Except for specialty coatings listed in Appendix N of this Chapter, any source that complies with the recordkeeping requirements of § 63.752 of the aerospace NESHAP, 40 CFR 63 subpart GG is deemed to be in compliance with the requirements of OAC 252:100-39-47(f).
- (g) **Test methods.**

## Permanent Final Adoptions

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(1) **Coatings which are not waterborne (water-reducible).** For coatings which are not waterborne, determine the VOC content of each formulation (less water and less exempt solvents) as applied using manufacturer's supplied data or Method 24 of 40 CFR 60, Appendix A. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance shall be based on the results from the Method 24 analysis.

(2) **Waterborne (water-reducible) coatings.** For waterborne coatings, manufacturer's supplied data alone can be used to determine the VOC content of each formulation.

(3) **Cleaning solvents.** Solvent composition and vapor pressure for cleaning solvents used in hand-wipe cleaning operations subject to OAC 252:100-39-47(d)(4)(A) shall be determined as specified in § 63.750(a) and (b) of the aerospace NESHAP 40 CFR 63 subpart GG.

(4) **Control equipment.** Measurements of VOC emissions from control equipment as allowed by OAC 252:100-39-47(d)(3) shall be conducted in accordance with EPA Methods 18, 25, and/or 25A of 40 CFR 60, Appendix A.

(5) **Exemptions.** Except for specialty coatings, any source that complies with the test method requirements of § 63.750 of the aerospace NESHAP 40 CFR 63 subpart GG is deemed to be in compliance with the requirements of this subsection.

(h) **Compliance date.**

(1) The requirements of this Section shall be considered RACT for control of VOC emissions from vehicle and component coating operations at aerospace manufacturing, rework, or repair facilities in Tulsa County upon the effective date of this revision. New or modified sources shall be in compliance upon start-up.

(2) Except for specialty coatings, any source that complies with the compliance dates and determinations of § 63.749 of the aerospace NESHAP, 40 CFR 63 subpart GG is deemed to be in compliance with the requirements of OAC 252:100-39-47(h).

(3) Owners or operators of facilities with specialty coatings that are compliant under the ARACT plan, but are not compliant with the VOC content limits contained in Appendix N of this Chapter will have six (6) months from the effective date of this revision to find an alternate coating or install controls. Owners or operators of such facilities shall notify the DEQ in writing of any such noncompliant specialty coatings within 90 days of the effective date of this revision. This notification shall include a list of the noncompliant specialty coatings, the VOC content of each coating, and the quantity of each coating used per month and per year.

(i) **Revocation of ARACT plans.** Existing ARACT plans for aerospace facilities located in Tulsa County shall become null and void upon the effective date of this revision.

**APPENDIX N. SPECIALTY COATINGS VOC CONTENT LIMITS [NEW]**

The following table is for use only in OAC 252:100-39-47.

**SPECIALTY COATINGS VOC CONTENT LIMITS**

Coating Type	Limit	
	lb/gal	g/l <sup>1</sup>
Ablative Coating	5.0	600
Adhesion Promoter	7.4	890
Adhesive Bonding Primers:		
Cured at 250°F or below	7.1	850
Cured above 250°F	8.6	1,030
Adhesives:		
Commercial Interior Adhesive	6.3	760
Cyanoacrylate Adhesive	8.5	1,020
Fuel Tank Adhesive	5.2	620
Nonstructural Adhesive	3.0	360
Rocket Motor Bonding Adhesive	7.4	890
Rubber-based Adhesive	7.1	850
Structural Autoclavable Adhesive	0.5	60
Structural Nonautoclavable Adhesive	7.1	850
Antichafe Coating	5.5	660
Bearing Coating	5.2	620
Caulking and Smoothing Compounds	7.1	850
Chemical Agent-Resistant Coating	4.6	550
Clear Coating	6.0	720
Commercial Exterior Aerodynamic Structure Primer	5.4	650
Compatible Substrate Primer	6.5	780
Corrosion Prevention Compound	5.9	710
Cryogenic Flexible Primer	5.4	645
Cryoprotective Coating	5.0	600
Dry Lubricative Material	7.3	880
Electric or Radiation-Effect Coating	6.7	800
Electrostatic Discharge and Electromagnetic Interference (EMI) Coating	6.7	800
Elevated-Temperature Skydrol-Resistant Commercial Primer	6.2	740

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Coating Type	Limit	
	lb/gal	g/l <sup>1</sup>
Epoxy Polyamide Topcoat	5.5	660
Fire-Resistant (Interior) Coating	7.3	800
Flexible Primer	5.3	640
Flight-Test Coatings		
Missile or Single Use Aircraft	3.5	420
All Other	7.0	840
Fuel Tank Coating	6.0	720
High-Temperature Coating	7.1	850
High-Temperature Radiation-Effect Coating	8.5	1,020
Insulation Covering	6.2	740
Intermediate Release Coating	6.4	750
Lacquer	6.9	830
Maskants:		
Bonding Maskant	10.02	1,230
Critical Use and Line Sealer Maskant	8.5	1,020
Seal Coat Maskant	10.2	1,230
Metallized Epoxy Coating	6.2	740
Mold Release	6.5	780
Optical Anti-Reflective Coating	6.3	750
Part Marking Coating	7.1	850
Pretreatment Coating	6.5	780
Rain Erosion-Resistant Coating	7.1	850
Rocket Motor Nozzle Coating	5.5	660
Scale Inhibitor	7.3	880
Screen Print Ink	7.0	840
Sealants:		
Extrudable/Rollable/Brushable Sealant	2.3	280
Sprayable Sealant	5.0	600
Silicone Insulation Material	7.1	850
Solid Film Lubricant	7.3	880
Specialized Function Coating	7.4	890
Temporary Protective Coating	2.7	320

Coating Type	Limit	
	lb/gal	g/l <sup>1</sup>
Thermal Control Coating	6.7	800
Wet Fastener Installation Coating	5.6	675
Wing Coating	7.1	850

<sup>1</sup>Coating limits expressed in terms of mass (grams) of VOC per volume (liters) of coating less water and less exempt solvent using Equation 1 below.

**EQUATION 1**

Grams of VOC per liter of coating (less water and less exempt solvent) shall be calculated using the following formula:

$$g/l = (W_s - W_w - W_{es}) / (V_s - V_w - V_{es})$$

Where:

- W<sub>s</sub> = weight of total volatiles in grams
- W<sub>w</sub> = weight of water in grams
- W<sub>es</sub> = weight of exempt compounds in grams
- V<sub>s</sub> = volume of coating in liters
- V<sub>w</sub> = volume of water in liters
- V<sub>es</sub> = volume of exempt compounds in liters

[OAR Docket #03-705; filed 4-21-03]

# Permanent Final Adoptions

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

[OAR Docket #03-707]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants

Part 3. Hazardous Air Pollutants  
252:100-41-15 [AMENDED]

### AUTHORITY:

Environmental Quality Board; 27A O.S. 2001, §§ 2-2-101, and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. 2001 § 2-5-101, *et seq.*

### DATES:

#### Comment period:

September 16, 2002 through October 16, 2002 and November 14, 2002

#### Public hearing:

October 16, 2002 and November 14, 2002

#### Adoption:

November 14, 2002

#### Submitted to Governor:

November 22, 2002

#### Submitted to House:

November 22, 2002

#### Submitted to Senate:

November 22, 2002

#### Gubernatorial approval:

January 2, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

#### Final adoption:

March 25, 2003

#### Effective:

June 1, 2003

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

##### Incorporated standards:

The following Subparts of 40 CFR Part 63 are incorporated by reference in their entirety as they exist on July 31, 2002:

- (1) Subpart A
- (2) Subparts F through J
- (3) Subparts L through O
- (4) Subparts Q through U
- (5) Subparts W through Y
- (6) Subparts AA through EE
- (7) Subparts GG through MM
- (8) Subparts OO through YY
- (9) Subparts CCC through EEE
- (10) Subparts GGG through JJJ
- (11) Subparts LLL through RRR
- (12) Subparts TTT through VVV
- (13) Subpart XXX
- (14) Subpart CCCC
- (15) Subpart GGGG
- (16) Subpart HHHH
- (17) Subpart NNNN
- (18) Subparts SSSS through VVVV
- (19) Subpart XXXX

The following Subparts of 40 CFR Part 61 are incorporated by reference in their entirety as they exist on July 31, 2002:

- (1) Subpart A
- (2) Subpart C
- (3) Subpart D
- (4) Subpart E
- (5) Subpart F
- (6) Subpart J
- (7) Subpart L
- (8) Subpart M

- (9) Subpart N
- (10) Subpart O
- (11) Subpart P
- (12) Subpart V
- (13) Subpart Y
- (14) Subpart BB
- (15) Subpart FF
- (16) Appendix A
- (17) Appendix B
- (18) Appendix C

#### Incorporating Rule:

252:100-41-15

#### Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.

#### ANALYSIS:

The proposed amendments to OAC 252:100-41-15 would update references to the federal National Emission Standards for Hazardous Air Pollutants (NESHAP). The Department of Environmental Quality (DEQ) periodically updates these references in accordance with its delegation agreement with the U.S. Environmental Protection Agency (EPA). Subsection 15(a) would be amended to incorporate the NESHAP, specified in 40 CFR 61, as they exist on July 31, 2002. Subsection 15(b) would be amended to incorporate by reference new and amended Maximum Achievable Control Technology (MACT) standards for hazardous air pollutants in 40 CFR Part 63. The new MACT standards to be added are 40 CFR 63 Subparts J (polyvinyl chloride and copolymers production), AA (phosphoric acid manufacturing), BB (phosphate fertilizer production), XX (ethylene manufacturing process units: heat exchange systems and waste operations), QQQ (primary copper smelters), UUU (petroleum refinery catalytic cracking, catalytic reforming and sulfur plant units), HHHH (wet formed fiberglass mat production), NNNN (surface coating of large appliances), SSSS (metal coil surface coating), TTTT (leather finishing operations), UUUU (cellulose products manufacturing), VVVV (boat manufacturing) and XXXX (rubber tire manufacturing). The EPA published between July 1, 2001 and July 31, 2002, amendments and corrections to MACT standards that have been previously incorporated by reference into subsection 15(a). The following amended MACT standards, as they exist on July 31, 2002, will be adopted by reference: 40 CFR 63 Subparts A (general provisions), O (ethylene oxide emissions from sterilization facilities), S (pulp and paper), U (polymer and resins group I), MM (chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills), SS (closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process), TT (equipment leaks - control level 1), UU (equipment leaks - control level 2), WW (storage vessels (tanks) - control level 2), YY (Generic MACT), EEE (hazardous waste combustors), GGG (pharmaceuticals production), HHH (natural gas transmission and storage facilities), JJJ (polymers and resins group IV), LLL (portland cement manufacturing), MMM (pesticide active ingredient manufacturing) and GGGG (solvent extraction for vegetable oil production).

#### CONTACT PERSON:

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**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 JUNE 1, 2003.**

### SUBCHAPTER 41. CONTROL OF EMISSION OF HAZARDOUS AIR POLLUTANTS AND TOXIC AIR CONTAMINANTS

#### PART 3. HAZARDOUS AIR POLLUTANTS

**252:100-41-15. National emission standards for hazardous air pollutants (NESHAP)**

(a) NESHAP, as found in 40 CFR Part 61, are hereby adopted by reference as they exist on July 1, ~~2001~~ 31, 2002, with the exception of Subparts B, H, I, K, Q, R, T, W and Appendices D and E, all of which address radionuclides. These standards shall apply to both existing and new sources of hazardous air pollutants (HAPs).

(b) General Provisions as found in 40 CFR Part 63, Subpart A, and the Maximum Achievable Control Technology (MACT) standards as found in 40 CFR Part 63, Subparts F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, LL, KK, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, CCCC, and GGGG, HHHH, NNNN, SSSS, TTTT, UUUU, VVVV, and XXXX are hereby adopted by reference as they exist on July 1, ~~2001~~ 31, 2002. These standards shall apply to both existing and new sources of HAPs.

[OAR Docket #03-707; filed 4-21-03]

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

[OAR Docket #03-708]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 47. Control of Emissions from Existing Municipal Solid Waste Landfills

- 252:100-47-3 [AMENDED]
- 252:100-47-6 [AMENDED]
- 252:100-47-7 [AMENDED]
- 252:100-47-8 [AMENDED]
- 252:100-47-9 [AMENDED]
- 252:100-47-10 [AMENDED]
- 252:100-47-11 [AMENDED]
- 252:100-47-12 [AMENDED]
- 252:100-47-13 [AMENDED]
- 252:100-47-14 [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. 2001, §§ 2-2-101, 2-2-201 and 2-5-101, *et seq.*

**DATES:**

**Comment period:**

September 16, 2002 through October 16, 2002 and November 14, 2002

**Public hearing:**

October 16, 2002 and November 14, 2002

**Adoption:**

November 14, 2002

**Submitted to Governor:**

November 22, 2002

**Submitted to House:**

November 22, 2002

**Submitted to Senate:**

November 22, 2002

**Gubernatorial approval:**

January 2, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

- 40 CFR 60.751, Definitions
- 40 CFR 60.752, Standards for air emissions from municipal solid waste landfills
- 40 CFR 60.753, Operational standards for collection and control systems
- 40 CFR 60.754, Test methods and procedures
- 40 CFR 60.755, Compliance provisions
- 40 CFR 60.756, Monitoring and operations
- 40 CFR 60.757, Reporting requirements, except 60.757 (a) (1) and (b)(1)(i)
- 40 CFR 60.758, Recordkeeping requirements
- 40 CFR 60.759, Specifications for active collection systems

**Incorporating rules:**

- 252:100-47-3
- 252:100-47-7
- 252:100-47-8
- 252:100-47-9
- 252:100-47-10
- 252:100-47-11
- 252:100-47-12
- 252:100-47-13
- 252:100-47-14

**Availability:**

The standards are available to the public for examination at the Department of Environmental Quality office at 707 North Robinson, 4th Floor, Oklahoma City, Oklahoma

**ANALYSIS:**

The DEQ is proposing to amend Subchapter 47 to update the incorporations by reference of 40 CFR 60.751 through 60.759 from July 1, 2000 to July 1, 2002.

**CONTACT PERSON:**

Lisa Donovan, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**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 JUNE 1, 2003.**

**SUBCHAPTER 47. CONTROL OF EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS**

**252:100-47-3. Definitions**

(a) The definitions in 40 CFR 60.751 are hereby incorporated by reference as they exist on July 1, ~~2000~~ 2002.

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

(1) **"Existing municipal solid waste landfill"** or **"existing MSW landfill"** means a municipal solid waste landfill that commenced construction, modification, or reconstruction before May 30, 1991 and accepted waste after November 8, 1987.

(2) **"State Plan"** means a program that the State is responsible for developing and implementing to achieve compliance with the emission guidelines in Subpart Cc of 40 CFR Part 60.

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## 252:100-47-6. Permits required

### (a) Part 70 operating permits.

(1) The owner or operator of an existing MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain a Part 70 permit for the landfill, unless the landfill is otherwise a Part 70 source.

(2) The owner or operator of an existing MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters, that is not otherwise a Part 70 source, is subject to OAC 252:100-8 as a Part 70 source ninety (90) days after the effective date of the state plan, even if the initial design capacity report was submitted earlier.

(3) When an existing MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain a Part 70 permit for the landfill if the landfill is not otherwise subject to the requirements of OAC 252:100-8 and if either of the following conditions is met:

(A) The landfill was never subject to the requirement for a control system under OAC 252:100-47-7.

(B) The owner or operator meets the conditions for control system removal specified in OAC 252:100-47-7.

(b) **Construction permits.** The owner or operator of any existing MSW landfill that installs a MSW landfill gas collection and control system is required to obtain a construction permit as provided by OAC 252:100-7-15 or OAC 252:100-8-4. If the landfill has a design capacity of at least 2.5 million cubic meters and 2.5 million megagrams and an estimated non-methane organic compounds (NMOC) emission rate of at least 50 megagrams per year, calculated in accordance with Section 9 of this Subchapter, the owner or operator of the MSW landfill shall also comply with the following requirements:

(1) The application for a construction permit and the collection and control system design plan shall be submitted to the DEQ within 12 months after the initial or any annual NMOC emissions rate report indicates that the emission rate equals or exceeds 50 megagrams per year, unless site specific sampling demonstrates that the emission rate is less than 50 megagrams per year.

(2) All contracts for installation of the emission control systems or for process modifications shall be awarded and all orders for the purchase of component parts to accomplish emission control or process modification shall be completed within 3 months of the submittal of the design plan under paragraph (b)(1) of this section.

(3) The installation of the collection and control system shall commence within 3 months of the awarding of contracts under paragraph (b)(2) of this section.

(4) The installation of the collection and control system shall be completed within 18 months of the submittal of the design plan under paragraph (b)(1) of this section.

(5) Within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 50 megagrams per year, the MSW landfill shall be in compliance with paragraphs (b)(1) through (b)(4) of this section.

## 252:100-47-7. Emission standards

An owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.752, which is hereby incorporated by reference as it exists on July 1, ~~2000~~ 2002.

## 252:100-47-8. Operational standards for collection and control systems

An owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.753, which is hereby incorporated by reference as it exists on July 1, ~~2000~~ 2002.

## 252:100-47-9. Test methods and procedures

An owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.754, which is hereby incorporated by reference as it exists on July 1, ~~2000~~ 2002.

## 252:100-47-10. Compliance provisions

An owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.755, which is hereby incorporated by reference as it exists on July 1, ~~2000~~ 2002.

## 252:100-47-11. Monitoring of operations

An owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.756, which is hereby incorporated by reference as it exists on July 1, ~~2000~~ 2002.

## 252:100-47-12. Reporting requirements

(a) The owner or operator of an existing MSW landfill shall submit an initial design capacity report to the DEQ within 90 days of the effective date of the State Plan.

(b) The owner or operator of an existing MSW landfill having a design capacity equal to or greater than 2.5 million cubic meters and 2.5 million megagrams, shall submit an initial NMOC emission rate report to the DEQ within 90 days of the effective date of the State Plan. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in 40 CFR 60.757(b)(1)(ii) and (b)(3).

(c) The owner or operator of an existing MSW shall comply with the provisions specified in 40 CFR 60.757, except 60.757(a)(1) and (b)(1)(i), which is hereby incorporated by referenced as it appears on July 1, ~~2000~~ 2002.

## 252:100-47-13. Recordkeeping requirements

An owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.758, which is hereby incorporated by reference as it exists on July 1, ~~2000~~ 2002.

**252:100-47-14. Specifications for active collection systems**

An owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR 60.759, which is hereby incorporated by reference as it exists on July 1, ~~2000~~ 2002.

[OAR Docket #03-708; filed 4-21-03]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT**

[OAR Docket #03-709]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 17. Tax Credit and Waste Reduction Incentives
- Part 3. Waste Reduction Incentives [REVOKED]
- 252:205-17-20 [REVOKED]
- 252:205-17-21 [REVOKED]
- 252:205-17-22 [REVOKED]
- 252:205-17-23 [REVOKED]
- 252:205-17-24 [REVOKED]
- 252:205-17-25 [REVOKED]
- 252:205-17-26 [REVOKED]
- 252:205-17-27 [REVOKED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and 2-7-106

**DATES:**

**Comment period:**

June 17, 2002 through July 17, 2002

**Public hearing:**

July 18, 2002 and September 10, 2002

**Adoption:**

September 10, 2002

**Submitted to Governor:**

September 19, 2002

**Submitted to House:**

September 19, 2002

**Submitted to Senate:**

September 19, 2002

**Gubernatorial approval:**

October 29, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATION BY REFERENCE:**

None

**ANALYSIS:**

The revocation of 252:205, Subchapter 17, Part 3 is 27A O.S., §§ 2-11-201 through 2-11-204.

**CONTACT PERSON:**

Catherine Sharp (405) 702-5100, 707 North Robinson, Fifth Floor, Oklahoma City, OK 73102; mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677.

**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 JUNE 1, 2003:**

**SUBCHAPTER 17. TAX CREDIT AND WASTE REDUCTION INCENTIVES**

**PART 3. WASTE REDUCTION INCENTIVES [REVOKED]**

**252:205-17-20. Applicability [REVOKED]**

~~The rules in this Part provide economic incentives to encourage Oklahoma generators to reduce the volume or the toxicity of the hazardous waste they generate.~~

**252:205-17-21. Incentives [REVOKED]**

~~(a) **Large quantity generators.** The DEQ shall give a reduction of up to one half of the in-state hazardous waste treatment or disposal fee specified in 27A O.S. § 2-7-121 to an Oklahoma large quantity generator who:~~

~~(1) Expands its full-time equivalent employment, up to a doubling of employees, while generating proportionally less hazardous waste than in the previous state fiscal year;~~

~~or~~

~~(2) Significantly reduces the toxicity of all or part of the hazardous waste which it generates, as demonstrated by a health-based risk analysis submitted by the generator in accordance with 27A O.S. § 2-11-204 (C).~~

~~(b) **Small quantity generators.** The DEQ shall give the maximum reduction of one half of the in-state hazardous waste treatment or disposal fee specified in 27A O.S. § 2-7-121 to an Oklahoma small quantity generator who:~~

~~(1) Expands its full-time equivalent employment, up to a doubling of employees, while generating proportionally less hazardous waste than in the previous state fiscal year;~~

~~or~~

~~(2) Significantly reduces the toxicity of all or part of the hazardous waste which it generates, as demonstrated by a health-based risk analysis submitted by the generator in accordance with 27A O.S. § 2-11-204 (C).~~

**252:205-17-22. Refund for volume reduction [REVOKED]**

~~Each generator who expands its full-time equivalent employment while generating proportionally less hazardous waste than in the previous state fiscal year will receive a disposal fee refund per ton of waste disposed in the application year as calculated in Appendix A.~~

**252:205-17-23. Refund for toxicity reduction [REVOKED]**

~~(a) Each generator who significantly reduces the toxicity of all or part of the hazardous waste which it generates, as demonstrated by a health-based risk analysis submitted by the generator in accordance with 27A O.S. § 2-11-204 (C) will receive a~~

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disposal fee refund per ton of waste disposed in the application year. The amount of the fee refund will be equal to the unit of hazardous waste decreased in toxicity divided by the total units of hazardous waste generated, multiplied by the dollar amount of the applicable fee at the time of treatment or disposal.

(b) ~~The degree to which the toxicity of a wastestream is reduced must be clearly demonstrated by a health based risk analysis that examines the concentrations of hazardous waste constituents and the likely means of exposure to employees and to the public.~~

## 252:205-17-24. Refund for elimination of a waste stream [REVOKED]

~~The DEQ will refund an additional \$0.50/ton for elimination of a hazardous waste stream through source reduction techniques.~~

## 252:205-17-25. Maximum total refund [REVOKED]

~~The maximum amount refunded shall not exceed one half of the total fees assessed.~~

## 252:205-17-26. Limitations [REVOKED]

~~Fee reductions will not be given for reductions in volume or toxicity that result from production phase outs or decline in production levels.~~

## 252:205-17-27. Application for fee reduction [REVOKED]

(a) ~~Small quantity generators shall submit a completed Small Quantity Generator's Hazardous Waste Reduction Plan form.~~

(b) ~~Large quantity generators shall submit a Hazardous Waste Reduction Plan according to 27A O.S. § 2-11-204(E) and the following documents:~~

- (1) ~~A written request for reduction in fees, including:
  - (A) ~~Documentation of reduction in hazardous waste generation compared with the applicable baseline year data and information to support claims of proportionate increase in employment during the same time period; or~~
  - (B) ~~Documentation of reduction in hazardous waste toxicity, including health based risk analysis data in compliance with 27A O.S. § 2-11-304(C).~~~~

(2) ~~A copy of the facility's Hazardous Waste Reduction Plan; and~~

(3) ~~A copy of the DEQ's Hazardous Waste Reduction Plan Summary Form.~~

(c) ~~The previous state fiscal year's data will be used to establish the baseline for employment and waste generation data for those generators submitting Hazardous Waste Reduction Plans and requests for fee reductions after July 1, 1993. Applications for fee reduction must be submitted by October 1 following the application year.~~

(d) ~~Once a baseline year has been established, the data will be used as the basis of comparison for future fee reductions. Another baseline may be approved if the generator provides a~~

~~written request for change and includes justification for use of another baseline year.~~

~~(e) The DEQ shall refund fees at the end of each fiscal year.~~

~~(f) The DEQ will review the biennial plan summary reports to evaluate any need for fee refund adjustment.~~

~~(g) The DEQ shall continue to refund fees as long as the generator continues to meet waste reduction criteria of 27A O.S. § 2-11-201 et seq. and the rules in this Part.~~

[OAR Docket #03-709; filed 4-21-03]

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 510. MUNICIPAL SOLID WASTE LANDFILLS [REVOKED]

[OAR Docket #03-698]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Chapter 510. Municipal Solid Waste Landfills [REVOKED]

### AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; Solid Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and the Oklahoma Solid Waste Management Act, 27A O.S. § 2-10-101 et seq.

### DATES:

#### Comment period:

March 15, 2002 through April 18, 2002

#### Public hearings:

April 18, 2002, June 25, 2002, and November 14, 2002

#### Adoption:

November 14, 2002

#### Submitted to Governor:

November 22, 2002

#### Submitted to House:

November 22, 2002

#### Submitted to Senate:

November 22, 2002

#### Gubernatorial approval:

January 2, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

#### Final adoption:

March 25, 2003

#### Effective:

June 1, 2003

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 5. Application for Permit

252:510-5-2 [AMENDED]

252:510-5-3 [AMENDED]

252:510-5-5 [AMENDED]

Subchapter 17. Operations

252:510-17-1 [AMENDED]

252:510-17-2 [AMENDED]

252:510-17-11 [NEW]

Subchapter 19. Closure and Post-closure Care

252:510-19-3 [AMENDED]

#### Gubernatorial approval:

July 22, 2002

#### Register publication:

19 Ok Reg 2891

#### Docket number:

02-1277

### INCORPORATION BY REFERENCE:

None

**ANALYSIS:**

Chapter 510 will no longer be necessary when Chapter 515 is adopted. Chapter 515 is the result of a comprehensive review and rewrite of existing rules, and resulted in merging Chapters 510 (Municipal Solid Waste Landfills) and 520 (Solid Waste Management) into a single Chapter.

**CONTACT PERSON:**

Contact Jon Roberts at jon.roberts@deq.state.ok.us or (405) 702-5100 (phone) or 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

**DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY, 707 N. ROBINSON, OKLAHOMA CITY, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S. § 255(B).**

**SUMMARY:**

Chapter 510 will no longer be necessary when Chapter 515 is adopted. Chapter 515 is the result of a comprehensive review and rewrite of existing rules, and resulted in merging Chapters 510 (Municipal Solid Waste Landfills) and 520 (Solid Waste Management) into a single Chapter.

*[OAR Docket #03-698; filed 4-21-03]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 515. MANAGEMENT OF SOLID WASTE**

*[OAR Docket #03-697]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Chapter 515. Management of Solid Waste [NEW]

**AUTHORITY:**

Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; Solid Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201; the Oklahoma Solid Waste Management Act, 27A O.S. § 2-10-101 *et seq.*, and the Oklahoma Waste Tire Recycling Act, 27A O.S. § 2-11-401 *et seq.*

**DATES:**

**Comment period:**

March 15, 2002 through April 18, 2002

**Public hearings:**

April 18, 2002, June 25, 2002, and November 14, 2002

**Adoption:**

November 14, 2002

**Submitted to Governor:**

November 22, 2002

**Submitted to House:**

November 22, 2002

**Submitted to Senate:**

November 22, 2002

**Gubernatorial approval:**

January 2, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATION BY REFERENCE:**

None

**ANALYSIS:**

The proposed new Chapter 515 combines Chapters 510 (Municipal Solid Waste Landfills) and 520 (Solid Waste Management) of the Oklahoma Administrative Code. Chapter 515 is the result of a comprehensive review and rewrite of existing rules, and was developed over approximately a two-year period by a committee of volunteers composed of members of the regulated community, environmental consultants, interested citizens, and members of DEQ staff. Committee members held a total of 17 meetings during the process, reviewing and discussing each Subchapter individually. The following significant modifications were made: outdated or unneeded rules were eliminated; other rules were added to address federal or statutory requirements; many rules were revised to address past concerns of the regulated community and DEQ; a significant effort was made to make the rules more readable and understandable; and the rule format was brought into compliance with the requirements of the Office of Administrative Rules.

**CONTACT PERSON:**

Contact Jon Roberts at jon.roberts@deq.state.ok.us or (405) 702-5100 (phone) or 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

**DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY, 707 N. ROBINSON, OKLAHOMA CITY, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., § 255(B).**

**SUMMARY:**

The proposed new Chapter 515 combines Chapters 510 (Municipal Solid Waste Landfills) and 520 (Solid Waste Management) of the Oklahoma Administrative Code. Chapter 515 is the result of a comprehensive review and rewrite of existing rules, and was developed over approximately a two-year period by a committee of volunteers composed of members of the regulated community, environmental consultants, interested citizens, and members of DEQ staff. Committee members held a total of 17 meetings during the process, reviewing and discussing each Subchapter individually. The following significant modifications were made: outdated or unneeded rules were eliminated; other rules were added to address federal or statutory requirements; many rules were revised to address past concerns of the regulated community and DEQ; a significant effort was made to make the rules more readable and understandable; and the rule format was brought into compliance with the requirements of the Office of Administrative Rules.

*[OAR Docket #03-697; filed 4-21-03]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 520. SOLID WASTE MANAGEMENT [REVOKED]**

*[OAR Docket #03-699]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Chapter 520. Solid Waste Management [REVOKED]

**AUTHORITY:**

Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; Solid Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201; the Oklahoma Solid Waste Management Act, 27A O.S. § 2-10-101 *et seq.*, and the Oklahoma Waste Tire Recycling Act, 27A O.S. § 2-11-401 *et seq.*

**DATES:**

**Comment period:**

March 15, 2002 through April 18, 2002

**Public hearings:**

April 18, 2002, June 25, 2002, and November 14, 2002

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**Adoption:**

November 14, 2002

**Submitted to Governor:**

November 22, 2002

**Submitted to House:**

November 22, 2002

**Submitted to Senate:**

November 22, 2002

**Gubernatorial approval:**

January 2, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on

March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:****Superseded rules:**

Subchapter 3. Permit Provisions

252:520-3-1. [AMENDED]

Subchapter 5. Application for Permit

252:520-5-2 [AMENDED]

252:520-5-3 [AMENDED]

252:520-5-5 [AMENDED]

252:520-5-9 [AMENDED]

Subchapter 9. Construction/Demolition Landfills

252:520-9-11 [AMENDED]

Subchapter 19. Biomedical Waste

252:520-19-10 [AMENDED]

Subchapter 21. Waste Tire Recycling, Certification, Permits, and Compensation Requirements

252:520-21-20 [NEW]

Subchapter 23. Closure, Post-closure, and Financial Assurance

252:520-23-8 [AMENDED]

Subchapter 27. Landfill gas incentive payments [NEW]

252:520-27-1 [NEW]

252:520-27-2 [NEW]

252:520-27-3 [NEW]

252:520-27-4 [NEW]

252:520-27-5 [NEW]

252:520-27-6 [NEW]

252:520-27-7 [NEW]

252:520-27-8 [NEW]

252:520-27-9 [NEW]

252:520-27-10 [NEW]

**Gubernatorial approval:**

July 22, 2002

**Register publication:**

19 Ok Reg 2896

**Docket number:**

02-1278

**Superseded rules:**

Subchapter 3. Permit Provisions

252:520-3-1.1 [AMENDED]

Subchapter 5. Application for Permit

252:520-5-2 [AMENDED]

252:520-5-3 [AMENDED]

252:520-5-5 [AMENDED]

Subchapter 9. Construction/Demolition Landfills

252:520-9-11 [AMENDED]

Subchapter 19. Biomedical Waste

252:520-19-10 [AMENDED]

Subchapter 21. Waste Tire Recycling, Certification, Permits, and Compensation Requirements

252:520-21-15 [AMENDED]

252:520-21-20 [NEW]

252:520-21-21 [NEW]

Subchapter 23. Closure, Post-closure, and Financial Assurance

252:520-23-8 [AMENDED]

Subchapter 27. Landfill gas incentive payments [NEW]

252:520-27-1 [NEW]

252:520-27-2 [NEW]

252:520-27-3 [NEW]

252-520-27-4 [NEW]

252-520-27-5 [NEW]

252-520-27-6 [NEW]

252-520-27-7 [NEW]

252-520-27-8 [NEW]

252-520-27-9 [NEW]

252-520-27-10 [NEW]

**Gubernatorial approval:**

January 2, 2003

**Register publication:**

20 Ok Reg 494

**Docket number:**

03-183

**INCORPORATION BY REFERENCE:**

None

**ANALYSIS:**

Chapter 520 will no longer be necessary when Chapter 515 is adopted. Chapter 515 is the result of a comprehensive review and rewrite of existing rules, and resulted in merging Chapters 510 (Municipal Solid Waste Landfills) and 520 (Solid Waste Management) into a single Chapter.

**CONTACT PERSON:**

Contact Jon Roberts at jon.roberts@deq.state.ok.us or (405) 702-5100 (phone) or 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

**DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY, 707 N. ROBINSON, OKLAHOMA CITY, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S. § 255(B).**

**SUMMARY:**

Chapter 520 will no longer be necessary when Chapter 515 is adopted. Chapter 515 is the result of a comprehensive review and rewrite of existing rules, and resulted in merging Chapters 510 (Municipal Solid Waste Landfills) and 520 (Solid Waste Management) into a single Chapter.

*[OAR Docket #03-699; filed 4-21-03]*

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

*[OAR Docket #03-710]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Chapter 631. Public Water Supply Operation [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, and 2-6-303.

**DATES:****Comment period:**

July 1, 2002 through August 6, 2002 and September 10, 2002

**Public hearings:**

August 6, 2002 and September 10, 2002

**Adoption:**

September 10, 2002

**Submitted to Governor:**

September 19, 2002

**Submitted to House:**

September 19, 2002

**Submitted to Senate:**

September 19, 2002

**Gubernatorial approval:**

October 29, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- Subchapter 1. Introduction
- 252:631-1-2 [AMENDED]
- 252:631-1-3 [AMENDED]
- 252:631-1-4 [AMENDED]
- Subchapter 3. Operations
- 252:631-3-1 [AMENDED]
- 252:631-3-2 [AMENDED]
- 252:631-3-3 [AMENDED]
- 252:631-3-5 [REVOKED]
- 252:631-3-6 [AMENDED]
- 252:631-3-7 [REVOKED]
- 252:631-3-8 [AMENDED]
- 252:631-3-9 [AMENDED]
- 252:631-3-10 [AMENDED]
- 252:631-3-11 [AMENDED]
- 252:631-3-12 [AMENDED]
- 252:631-3-13 [AMENDED]
- 252:631-3-14 [REVOKED]
- 252:631-3-21 [AMENDED]
- 252:631-3-22 [NEW]
- Subchapter 5. Minor Water Sources [NEW]
- 252:631-5-1 [NEW]
- 252:631-5-2 [NEW]
- 252:631-5-3 [NEW]
- 252:631-5-4 [NEW]
- 252:631-5-5 [NEW]
- Appendix A. Primary Drinking Water Standards [REVOKED]
- Appendix B. Monitoring Requirements [REVOKED]
- Appendix C. Public Notice Requirements [REVOKED]

**Gubernatorial approval:**

October 31, 2002

**Register publication:**

20 Ok Reg 61

**Docket number:**

02-1436

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

40 CFR Parts 141 and 143

**Incorporated rules:**

OAC 252:631-1-3

**Availability:**

From the contact person

**ANALYSIS:**

In order to implement state statutes and the federal program, for which DEQ has been awarded primacy, the DEQ must have rules in place. This chapter has been revised to update the rules as directed by EPA in order to ensure that DEQ retains primacy in administering the public water supply system program under the Safe Drinking Water Act. This is accomplished by updating the incorporation by reference of 40 CFR Parts 141 and 143 and the revocation of current rule provisions that are found in these sections. Additionally, changes are proposed to the fee section of the rule in order for the rule to reflect the requirements in state law, 27A O.S. § 2-6-306 by eliminating fee language conflicting with that which already appears in OAC 252:305 "Laboratory Services". Finally, the regulations for minor water systems were grouped together in a new subchapter to ease compliance for minor systems.

**CONTACT PERSON:**

Shellie Chard-McClary, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405)702-8100.

**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 JUNE 1, 2003:**

**SUBCHAPTER 1. INTRODUCTION**

**252:631-1-1. Purpose**

(a) This chapter sets the operation standards for Public Water Supply systems so they may provide safe drinking water. This Chapter is analogous to the federal PWS program. Other rules may govern Public Water Supply system operations, such as the Discharge Regulations (OAC 252:605), Laboratory Certification (OAC 252:300), Public Water Supply Construction Standards (OAC 252:626) and Operator Certification (OAC 252:710). This Chapter implements the "Oklahoma Water Supply Systems Act" at Title 27A, § 2-6-301 and following.

(b) This chapter applies to any person or entity, including any federal facility, that operates a Public Water Supply system in Oklahoma. ~~A glossary of terms is provided in the Supplementary Information.~~

**252:631-1-2. Definitions**

In addition to terms defined in Title 27A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

~~"Action level" means the concentration which initiates lead and copper corrective actions in a Public Water Supply system.~~

~~"Approved laboratory" means a laboratory certified and or approved by the DEQ to analyze water samples to determine compliance with maximum allowable levels, laboratory approved by EPA, DEQ, or an EPA approved third party certification program (such as the National Sanitation Foundation, and Drinking Water Accreditation Program). Laboratory approval must be based upon Safe Drinking Water Act requirements and must be specific to each parameter analyzed.~~

~~"Compliance cycle" means the nine year calendar year cycle during which Public Water Supply systems must monitor. Each cycle consists of three three year compliance periods, the first of which began January 1, 1993.~~

~~"Compliance period" means a three year calendar year period within a compliance cycle.~~

~~"Comprehensive performance evaluation" is a thorough review and analysis of a treatment plant's performance based capabilities and associated administrative, operation and maintenance practices.~~

~~"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.~~

~~"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation and filtration resulting in substantial particulate removal.~~

~~"DBP site sampling plan" means a plan to be approved by the DEQ that is to collect four samples of DBPs each quarter~~

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from either the same locations as bacteriological samples are collected, with 75% of them from major population areas, or at the farthest point of small systems.

**"Disinfection"** means a process which ~~that~~ inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

~~"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.~~

~~"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.~~

**"First draw sample"** means a one liter sample of tap water that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

**"Groundwater under the direct influence of surface water"** means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* ~~Lambli~~a or (for surface water systems serving at least 10,000 people only) *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which ~~that~~ closely correlate to climatological or surface water conditions.

~~"Haloacetic acids five (HAA5)" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures.~~

**"Laboratory checks"** means chemical, radiochemical, physical ~~and~~ bacteriological, ~~and~~ microbiological tests made in a laboratory ~~accredited~~ approved by the DEQ, on water samples submitted to confirm the quality of the water.

~~"Large system" means a water system that serves more than 50,000 persons for purposes of lead and copper control.~~

~~"Lead service line" means a service line made of lead which connects the water main to the building outlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.~~

**"Maximum contaminant level (MCL)"** means the maximum permissible level of a contaminant in a Public Water Supply system which ~~that~~ has been determined to be necessary to safeguard the public health as specified in these regulations. ~~Maximum contaminant levels may also be referred to MCL are the same~~ as primary drinking water standards.

**"Maximum residual disinfectant level (MRDL)"** means the level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. Compliance with the MRDL will be determined using the disinfectant concentration measured at the time Total Coliform Rule (TCR) samples are collected.

~~"Medium system" means a water system that serves more than 3,300 persons and less than or equal to 50,000 persons for purposes of lead and copper control.~~

**"Operating records and reports"** means the daily record of data connected with the operation of the system compiled in a monthly report.

**"Point of entry (POE)"** means the point at which a source or combination of sources enters the distribution system.

**"Primary Drinking Water Standards"** means the same as MCL.

**"Protected groundwater free of sanitary defects"** means a ground water source which ~~that~~ is properly designed and permitted, practices full-time chlorination, and is properly operated and maintained as evidenced by no critical deficiencies on inspections.

**"Public Water Supply (PWS) system"** means a system, whether publicly or privately owned, which supplies water under pressure to the public through pipes or other constructed conveyances whether receiving payment for same or not. Multi-family dwellings, which are constructed, inspected, and maintained under State Health Department-approved plumbing code ~~and~~ purchase water from a permitted water system ~~shall, do not provide treatment, and do not resell water, are not~~ be classified as a Public Water Supply system. The following are the categories of Public Water Supply systems:

(A) **"Community water system"** means any PWS system which ~~that~~ serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(B) **"Non-community water system"** means any PWS system which ~~that~~ serves an average of at least twenty-five (25) individuals at least sixty (60) days per year but is neither a community water system nor a non-transient non-community water system.

(C) **"Non-transient non-community (NTNC) water system"** means any PWS system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six months per year.

(D) **"Minor water system"** means any other PWS system not included in (1), (2), or (3) (A), (B), or (C) of this definition. These water systems may be state licensed facilities or non-licensed facilities.

**"Residual disinfectant concentration"** means the concentration of disinfectant measured in ~~mg/l~~ milligrams per liter (mg/l) in a representative sample of water.

~~"Sanitary survey" means an on site review of the water source, distribution system, treatment facilities, equipment, operation and maintenance of a PWS system for the purpose of evaluating the adequacy for producing and distributing safe drinking water.~~

**"Secondary standard"** means a non-mandatory guideline which ~~that~~ has been determined to be desirable to provide acceptable drinking water.

~~"Service line sample" means a one-liter water sample that has been standing in the service line for at least 6 hours.~~

**"Single family structure"** means a building constructed as a single family residence that is currently used as a residence or a place of business.

**"Slow sand filtration"** means a process involving passage of raw water through a bed of sand at low velocity (generally less than 50 gallons/sq.ft./day) resulting in substantial particulate removal by physical and biological mechanisms.

**"Small water system"** means a PWS system that serves 3,300 or fewer people.

**"Source"** means any lake, stream, spring or groundwater supply which ~~that~~ is used as treated or untreated water for a PWS system.

**"Specific Ultraviolet Absorption (SUVA)"** means absorption at 254 nanometers (nm), an indicator of the humic content of a water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV<sub>254</sub> in m<sup>-1</sup>) by its concentration of dissolved organic carbon (DOC in mg/L).

**"TOC"** means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

**"Too numerous to count"** means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

**"Total coliform positive sample"** means a sample in which one or more coliform organisms are found.

**"Total trihalomethanes (TTHM)"** means the sum of the concentrations in mg/L of the THM compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]) rounded to two significant figures.

**"Treatment technique"** means the ~~disinfection~~ practice of a PWS system to properly ~~inactivate~~ remove pathogens and total organic carbon.

**"Turbidity"** means the amount of suspended material in water as measured by Nephelometric Turbidity Units (NTU).

**"Virus"** means a virus of fecal origin which is infectious to humans by waterborne transmission.

**"Waterborne disease outbreak"** means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a PWS system which is deficient in treatment, as determined by the DEQ.

**"Water Treatment"** means the act of removing contaminants from source water or adjusting water quality by the addition of chemicals, filtration, and other processes, thereby making the water safe for human consumption.

**252:631-1-3. Adoption of U.S. EPA regulations by reference**

The provisions Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations" of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, 2000—2002, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.

**252:631-1-4. Use of incorporated federal regulations**

(a) As used in the incorporated federal regulations, unless the context clearly indicates otherwise, the term "State" is synonymous with DEQ.

(b) This Chapter implements the federal PWS program. ~~The appendices in this Chapter are intended to make it easier to understand the federal requirements. Any inconsistency between~~

~~the appendices of this Chapter and the incorporated federal regulations is inadvertent, and the incorporated federal regulations will control.~~

**SUBCHAPTER 3. OPERATIONS**

**252:631-3-1. PWS criteria**

(a) All systems must properly operate and maintain each unit to provide treatment of the water in accordance with the purpose for which the units were designed and according to the terms of their permits. Employees must be trained in the proper operation and maintenance of the system.

~~(b) All systems must meet the drinking water standards set forth in Appendix A.~~

~~(c) All systems must meet the monitoring requirements set forth in Appendix B.~~

(b) Public water supply systems must comply with all applicable Primary Drinking Water Standards in 40 CFR Part 141, which includes, but is not limited to, the following:

(1) Microbiological standards in 40 CFR Section 141.63;

(2) Inorganic chemicals standards in 40 CFR Section 141.11 and Section 141.62;

(3) Organic chemical standards in 40 CFR Section 141.61;

(4) Disinfectant byproduct standards in 40 CFR Section 141.12 and Section 141.64;

(5) Radiochemical standards in 40 CFR Section 141.15 and Section 141.16;

(6) Turbidity standards in 40 CFR Section 141.13; and

(7) Residual disinfectant level standards in 40 CFR Section 141.65

(c) Public water supply systems must comply with all applicable monitoring and analytical requirements in 40 CFR Part 141, which includes, but is not limited to, the following:

(1) Coliform requirements in 40 CFR Section 141.21;

(2) Turbidity requirements in 40 CFR Section 141.22;

(3) Inorganic chemicals requirements in 40 CFR Section 141.23;

(4) Organic chemical requirements in 40 CFR Section 141.24;

(5) Radiochemical requirements in 40 CFR Section 141.25 and Section 141.26;

(6) Total trihalomethane requirements in 40 CFR Section 141.30;

(7) Lead and copper requirements in 40 CFR Section 141, Subpart I;

(8) Unregulated contaminant requirements in 40 CFR Section 141.40;

(9) Sodium requirements in 40 CFR Section 141.41;

(10) Corrosivity requirements in 40 CFR Section 141.42;

(11) Filtration and disinfectant requirements in 40 CFR Section 141.74; and

(12) Disinfectant residuals and disinfectant by-product requirements in 40 CFR, Section 141.30 and 40 CFR Subpart

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(d) Systems, which operate on an intermittent or seasonal basis, shall submit bacteriological samples on two consecutive days prior to placing the system into operation. The system can be placed into operation only after the samples are shown to be safe.

### 252:631-3-2. Laboratory approval

Compliance analyses for coliform, inorganics, organics, radioactivity and corrosivity contaminants ~~shall~~ must be performed in a laboratory ~~certified~~ approved by the EPA or ~~accredited by~~ the DEQ. Laboratory certification must be based upon Safe Drinking Water Act requirements and must be specific to each parameter analyzed. Testing required for compliance with turbidity treatment technique, disinfectant residual, temperature and pH requirements may be performed by a laboratory operator certified by the DEQ. Process control tests may be performed by a laboratory operator certified by the DEQ. The DEQ may approve a laboratory for the purposes of testing for compliance with primary drinking water standards upon written submittal of a request for approval from the owner of the laboratory and upon proof satisfactory to the DEQ that the laboratory:

- (1) possesses sufficient personnel, equipment, and facilities; ~~and~~
- (2) implements an adequate quality control and quality assurance program;
- (3) owns and will continue to own sufficient managerial and financial resources to continuously comply with and implement all requirements of "Standard Methods for the Examination of Water and Wastewater" in accordance with the current "Manual for the Certification of Laboratories Analyzing Drinking Water;" and
- (4) ~~transmit~~ transmits the analyses to the ~~State Environmental Laboratory (SEL)~~ DEQ in an electronic form acceptable to the ~~SEL~~ DEQ.

### 252:631-3-3. ~~Need for full-time disinfection~~ Disinfection requirements

#### ~~(a)~~ Chlorine.

~~(1a)~~ Mandatory chlorination-disinfection. Full-time ~~chlorination~~ disinfection is mandatory for:

- ~~(A1)~~ a surface water, groundwater under the direct influence of surface water, and spring water supply, such as a lake, reservoir, stream or spring supplies, unless an alternative has been approved by the DEQ. Each system must provide disinfection in accordance with 40 CFR Sections 141.72(b) and 141.74(c);
- ~~(B2)~~ a groundwater supply system supplies or purchase water systems whenever the record of bacteriological tests of the system does not indicate a safe water supply under the criteria listed in Appendix A, Bacteriological. show:
  - (A) a persistent presence of Total Coliform; or
  - (B) a verified Fecal Coliform, or E. Coli MCL exceedance
- ~~(C3)~~ any new well in a system where the initial bacteriological tests of the well do not show a safe record with the

DEQ for two (2) consecutive days after completion and testing of the well.

~~(2b)~~ Modification of disinfection methods. When any change in the disinfection process is contemplated, contact the DEQ. Submittal of an application, including plans, specifications ~~and~~ engineering reports, disinfection profile and disinfection benchmark justifying such a change may be required in order to obtain approval from the DEQ.

#### ~~(c)~~ Chlorine.

~~(1)~~ The minimum free chlorine residual at the most distant points in a water distribution system must be 0.2 mg/l.

~~(2)~~ Free chlorine residuals must be at least 1.0 milligram per liter at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

#### ~~(bd)~~ Chloramines.

~~(1)~~ Prior public notice. Systems must notify all users of kidney dialysis machines at least one month before introducing chloramines into the distribution system or starting chloramination.

~~(2)~~ Chloramines engineering study. Before changing to chloramines as the residual disinfectant in the distribution system, the system must conduct and submit to the DEQ for approval an engineering study and weekly analyses for at least six ~~(6)~~ weeks prior to and quarterly for one year following such a change of disinfectant.

~~(3)~~ Contents of engineering study. The engineering study and analysis must address the following:

(A) Select at least four (4) sample points for each treatment plant used by the system. At least twenty-five percent (25%) of the sample points must be at locations within the distribution system reflecting the maximum residence time of water in the system; and

(B) Collect samples from the selected points weekly for six ~~(6)~~ weeks and perform the following analyses before modification of treatment is initiated:

- (i) Total coliform;
- (ii) Fecal coliform;
- (iii) Fecal streptococci; and
- (iv) Standard plate counts at 35°C and 20°C.

~~(43)~~ Continuing testing. After modification of the treatment process, perform the bacteriological tests for samples collected at each of the selected points at quarterly intervals for one year, and then annually, when samples are collected for total trihalomethane determination. Submit the results to the DEQ.

~~(54)~~ Free chlorine-Primary Disinfection. ~~Free chlorine shall~~ A disinfectant must be added to provide a period of time for disinfection ~~the required log inactivation of Giardia Lamblia cysts before ammonia is added.~~

~~(5)~~ Total chlorine. The minimum total chlorine residual at the most distant points in a water distribution system must be 1.0 mg/l and at least 2.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(ee) **Other disinfectants.** Iodine or bromine compounds ~~shall~~ must not be used as a disinfectant. Ozone or ultraviolet light may be used for in-plant treatment or disinfection provided an approved residual disinfectant is added prior to distribution and maintained according to ~~OAC 252:631-3-10, Process Control Tests~~ this chapter. Chlorine dioxide may be used as long as the requirements in ~~OAC 252:631-3-10(1)(e)~~ this chapter are met.

(f) **Process control tests for disinfectants.** Control tests must be performed by all systems that disinfect in accordance with procedures approved by the DEQ. Sampling points must be changed regularly so that the system is sampled completely at least once each week.

(1) **Chlorine.**

(A) Systems that use chlorine must test for free chlorine and total chlorine residual twice a day in the distribution system.

(B) The minimum free chlorine residual at the most distant points in a water distribution system must be 0.2 mg/l.

(C) Free chlorine residuals must be at least 1.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(2) **Chloramines.**

(A) Systems that use chloramines must test for total chlorine residual twice a day in the distribution system.

(B) Systems that use chloramines must submit yearly Standard Plate Count and Fecal Streptococci samples from the distribution system in order to document that no microbiological regrowth is occurring in the distribution system.

(C) The minimum total chlorine residual at the most distant points in a water distribution system must be 1.0 mg/l.

(D) Total chlorine residuals must be at least 2.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(3) **Other disinfectants.**

(A) Systems that use chlorine dioxide, ozone or ultraviolet light must maintain a free chlorine residual, or total chlorine residual, where chloramines are used, in accordance with OAC 252:631-3-3(a) and (b).

(B) Systems that use ozone or chlorine dioxide must perform process control tests in accordance with 40 CFR Section 141.132.

**252:631-3-4. Validation of data**

Notwithstanding other provisions of this Chapter, samples ~~which that~~ are not properly collected or submitted, ~~samples~~ not collected by trained and authorized personnel, not analyzed in an approved laboratory, or samples ~~which that~~ do not represent the distribution system ~~shall~~ must not be used to determine compliance with these regulations. Total coliform positive samples, which are due to improper analysis, domestic or other

non-distribution plumbing problems, or due to circumstances or conditions ~~which that~~ do not reflect water quality in the distribution system ~~shall~~ must not be counted toward meeting minimum monitoring requirements. The DEQ must document the determination that there are circumstances or conditions ~~which that~~ do not reflect water quality in the distribution system. A sample that produces a turbid culture in the absence of gas production, produces a turbid culture in the absence of an acid reaction, exhibits confluent growth, or produces colonies too numerous to count must be invalidated and replaced with another sample within ~~24~~ twenty-four (24) hours of notification by the state.

**252:631-3-5. Disinfection byproducts [REVOKED]**

(a) **DBP monitoring.** According to EPA rules, ~~unintended disinfectant byproducts (DBPs) may pose health risks. When the DBPs are high, then develop treatment profiles to remove excess organic materials (measured as TOC or total organic carbon) and excess disinfectant that may react to form DBPs, balancing the risks between microbial pathogens and DBPs. PWS systems that serve at least 10,000 people and use either surface water or groundwater under the direct influence of surface water must disinfect and monitor for DBPs. DBPs must be collected quarterly according to an approved site sampling plan. Note, EPA rules require all PWS systems to monitor DBPs by 1/1/2004 (see Appendix C).~~

(b) **Running annual average.** Profiling decisions are based on the average concentration of TTHM and HAA5 for the most recent four quarters. Larger systems that follow the federal Information Collection Rule (Subpart M of 40 CFR Part 141) must average their DBPs over the most recent 12 months. Systems above 80% of the MCL or systems that have not collected 4 quarters of data by March 16, 1999, must sample their DBPs and do disinfection profiling. For good cause, the system and the DEQ may agree to select a different data set.

**252:631-3-6. Disinfection profiling and benchmarking**

(a) ~~Systems that must monitor DBPs must also profile their disinfection practices, unless the DEQ grants a waiver based on their running annual average data which shows the DBPs are less than 80% of the MCLs (0.064 mg/l TTHM and 0.048 mg/l HAA5). Profiling systems must monitor under paragraph (b) of this section once a day for one year, beginning no later than March 16, 2000. Profiling may use one to three years of data.~~

(b) ~~The monitoring criteria for each segment during peak hourly flow are:~~

- (1) ~~temperature and pH of the finished water;~~
- (2) ~~residual disinfectant concentration ("C") leaving the plant; and~~
- (3) ~~determine the disinfectant contact time ("T") from the point of disinfection to the first customer.~~

(c) ~~Alternative monitoring may be approved for systems with three years of chlorine MOR data. Systems that use chloramines or ozone for primary disinfection must also calculate the logs of inactivation for viruses, using a method~~

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approved by the DEQ. This monitoring data is used to calculate the inactivation ratio based on CT99.9 values. For CT calculations, see 40 CFR Part 141 Subpart H.

(d) ~~Systems must retain disinfection profile data in graphic form, in a spreadsheet or in some other form acceptable to the DEQ. PWS Systems must develop disinfection profiles and benchmarks in accordance with 40 CFR Part 141, Subpart P.~~

## 252:631-3-7. Disinfection benchmarking [REVOKED]

(a) ~~Before making any changes in their disinfection practices, systems that profile their disinfection must establish the least amount of disinfection (the benchmark) to assure the change will not significantly reduce microbial protection. The benchmark is the lowest monthly average of Giardia lamblia inactivation in one year of profiling data, or the average of the lowest months for multiple years of profiling data.~~

(b) ~~Systems that use chloramines or ozone for primary disinfection must also calculate the disinfection benchmark for viruses, using a method approved by the DEQ.~~

(c) ~~Before changing their disinfection practices, systems must provide the DEQ with their disinfection benchmark data and an analysis of how the proposed change will affect the current levels of disinfection.~~

## 252:631-3-8. Public notice requirements

(a) ~~Violations. Public Water Supplies must notify the public of violations according to the table of public notice requirements in Appendix C. Public notice must not use unduly technical language or unduly small print and shall be in a form prescribed or approved by the DEQ. The notice must include mandatory health effects information where mandatory language is prescribed in 40 CFR Part 141.32.~~

(b) ~~**New customers.** The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any maximum contaminant level, or any maximum residual disinfectant level, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins. PWS systems must provide public notice in accordance with 40 CFR Part 141, Subparts D and Q.~~

## 252:631-3-9. Annual consumer confidence reports

(a) ~~Community water systems must deliver an annual report to their customers, identified by billing units and service connections. The contents of the report are described at 40 CFR Part 141.153, and must be in a form specified or approved by the DEQ. The reports must contain accurate and understandable information on the quality of the water and a table of contaminants detected, the level detected, the MCL, the violations, and the probable sources of the contamination (see 40 CFR Part 141.23 - Part 141.25). The reports also must describe the potential adverse health effects from exposure to contaminants that are above the MCLs, using the language of Appendix C to 40 CFR 141, Subpart O all monitoring violations and any corrective action taken to eliminate the violations.~~

(b) ~~Each existing community water system must have delivered its first report to their customers and the DEQ by October 19, 1999, its second report by July 1, 2000, and thereafter by each July 1. The first report must contain data collected during or before calendar year 1998. Subsequent reports must contain data collected during the previous calendar year and the most recent data within the last five years. A new community water system must deliver its first report by July 1 of the year following its first full calendar year of operation and annually thereafter. A community water system that sells water to another community water system must have delivered the information to the buyer system by April 19, 1999, by April 1, 2000, and by April 1 annually thereafter or on a date mutually agreed upon by the seller and the purchaser and specifically included in a contract between the parties.~~

(c) ~~Within three months after notifying their customers, community systems must certify writing that the report was delivered to their customers. Systems must keep a copy at least five years, and make their reports available to the public upon request.~~

(d) ~~Methods of delivery.~~

(1) ~~Community water systems serving 10,000 persons or more must mail or otherwise directly deliver a copy of the report to each customer who gets a water bill and make a good faith effort to reach other consumers such as:~~

(A) ~~posting the reports on the Internet;~~

(B) ~~mailing to postal patrons in metropolitan areas;~~

(C) ~~advertising the availability of the report in the news media;~~

(D) ~~publishing in a local newspaper;~~

(E) ~~posting in public places such as cafeterias or lunch rooms of public buildings; or~~

(F) ~~delivering multiple copies for distribution by single-billed customers such as apartment buildings or large private employers and to community organizations.~~

(2) ~~Each community water system serving 100,000 or more persons must also post its current year's report to a publicly accessible site on the Internet.~~

(3) ~~Community water systems serving fewer than 10,000 persons either must mail or deliver a copy of the annual report to each customer, or they must Publish the reports in one or more local newspapers serving the area in which the system is located and state that the reports will not be mailed.~~

(4) ~~Systems serving 500 or fewer persons need not deliver copies of the annual report to their customers if at least once per year by mail, by door to door delivery or by posting in an appropriate location they notify their customers that the annual report is available upon request.~~

PWS systems must prepare and deliver an annual Consumer Confidence Report in accordance with 40 CFR Part 141, Subpart O.

## 252:631-3-10. Process control tests

~~These control Control tests shall must be performed in accordance with procedures approved by the DEQ.~~

(1) ~~Disinfection.~~

(A) **Monitoring free-chlorine in the distribution system.** Systems that use chlorine must test for free-chlorine residual twice a day in the distribution system at selected points. Points shall be changed regularly so that the system is sampled completely at least once each week. The minimum free-chlorine residual at the most distant points in a water distribution system shall be 0.2 milligrams per liter. Free-chlorine residuals shall be at least 1.0 milligram per liter at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(B) **Chloramines.** Systems that use chloramines must test for combined-chlorine residual twice a day in the distribution system at selected points. Systems utilizing chloramination as a residual disinfectant must submit yearly samples from the distribution system in order to document that no microbiological regrowth is occurring in the distribution system. The minimum combined-chlorine residual at the most distant points in a water distribution system shall be 1.0 milligram per liter. Combined-chlorine residuals shall be at least 2.0 milligrams per liter when leaving the plant or well. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(C) **Chlorine dioxide.** Systems that use chlorine dioxide must do control tests twice a day on finished water. Control tests and by-product limits must be according to manufacturer specifications or to an approved plan.

**(21) Treatment plants. Surface water, groundwater under the direct influence of surface water, and springs.**

(A) Systems that use coagulation, settling, softening or filtration must do the following chemical control tests on the filtered water twice a day. ~~List them, record the results~~ on a report form provided or approved by the DEQ, and submit the form to the DEQ Water Quality Division each month, with a copy to the local DEQ representative:

- (i) Alkalinity - Phenolphthalein (P);
- (ii) Alkalinity - Total;
- (iii) Hardness (where softening is used);
- (iv) pH value; and
- (v) Stability to calcium carbonate (once per day);

(B) Perform Jar tests as needed to determine the optimum coagulant dosages for plant control and operation to meet turbidity requirements.

(C) Turbidity samples must be ~~performed on representative samples of the system's filtered water during each four-hour period of operation. Continuous monitoring for turbidity may be substituted for grab sampling. Record the highest turbidity value per four-hour period. For systems using slow sand filtration or serving less than five hundred (500) population, the~~

DEQ may reduce the sampling frequency to daily if it is determined that less frequent monitoring is sufficient to determine filter performance.

(D) The residual disinfectant concentration at the POE must be monitored continuously and the lowest value recorded each day.

(i) Grab sampling every four (4) hours may be substituted for continuous monitoring for no more than five (5) working days following monitoring equipment failure.

(ii) Systems serving 3,300 or fewer persons may take grab samples in lieu of continuous monitoring based on the following:

- (I) population less than 501—1 sample per day;
- (II) population of 501 through 1,000—2 samples per day;
- (III) population of 1,001 through 2,500—3 samples per day;
- (IV) population of 2,501 through 3,300—4 samples per day.

(iii) Samples must be taken at evenly spaced intervals throughout daily operation. If the residual disinfectant concentration falls below 0.2 mg/l in a system, the system must monitor every four (4) hours until the residual disinfectant in the system is equal to or greater than 0.2 mg/l. Measure Residual disinfection at the same point and time as total coliform samples are collected and record on the sample form.

(E) ~~Minor water systems that use surface water are not required to submit monthly operation reports (MORs). However, these systems must measure turbidity and chlorine residuals daily, maintain a chlorine residual of at least 1 mg/l, and keep records of these measurements at the plant, collected and analyzed in accordance with 40 CFR Part 141, Subparts H and P.~~

(32) **Groundwater supplies.** The following tests are required for community and non-transient non-community water systems utilizing groundwater as a source. Test results ~~shall~~ must be listed as indicated on the appropriate forms and submitted to the DEQ:

(A) Static level and pumping level of each well ~~shall~~ must be determined quarterly;

(B) Alkalinity, pH, and stability ~~shall~~ must be determined at least monthly for community systems and at least quarterly for non-transient non-community water systems; and

(C) Where chlorination is practiced, determine the chlorine residual twice daily in the distribution system and once daily at the POE.

(3) **Purchase water systems.** Purchase water community systems that provide supplemental chlorination must determine the chlorine residual twice daily in the distribution system and once daily at the POE.

(4) **Special tests.**

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(A) Systems that remove iron or manganese must also test the raw and finished water weekly for those metals.

(B) Systems that treat for the removal of regulated contaminants must monitor the raw and finished water for those contaminants daily in addition to collecting compliance samples.

(C) Threshold odor and other tests may be required by the DEQ based on local conditions.

(5) **Fluoridation.** Where fluoridation is practiced, the optimum fluoride concentration in the distribution system is 0.8 mg/L for reducing dental caries. The recommended control range in the distribution system is 0.7 to 1.3 mg/L. System must:

(A) Analyze analyze the water twice a day, both before and after fluoridation, to be sure the fluoride concentration stays within the recommended control range.

(B) Forward forward a copy of the analytical report (DEQ form No. 631-001) to the DEQ monthly and keep a copy at the plant; and

(C) Every month submit a sample of treated water to the DEQ State Environmental Laboratory, or to a DEQ Certified-DEQ-Approved laboratory, for analysis of fluoride content every month.

### 252:631-3-11. Operating records & reports

(a) **Immediate notification to DEQ.** Each system must report to the DEQ by the end of the next business day if any of the following occur:

(1) Waterborne disease outbreak;

(2) Finished water turbidity exceeds one (1) NTU for surface water systems serving a population greater than 10,000 and five (5) NTU for surface water systems serving a population of 10,000 or less. After January 1, 2005, all surface water systems must report if the finished water turbidity exceeds one (1) NTU;

(3) Chlorine residual falls below 0.2 mg/l at the POE and whether the residual was restored to at least 0.2 mg/l within four (4) hours;

(4) Nitrate level exceeds 10 mg/l;

(5) Verification of a positive Fecal Coliform or E. Coli sample; and

(6) Exceedance of the Chlorine Dioxide MRDL.

(ab) **Records.** All systems must keep a daily record of the results of required process control tests and list the results of microbiological checks, required in Appendix B, on the dates sampled. The records of all laboratory checks and control tests must indicate when, where, and by whom the tests were made. The PWS system must complete and submit the original of the DEQ-approved monthly operational report form to the DEQ with a copy to the appropriate local DEQ representative no later than the tenth (10th) day of the following month.

(bc) **Treated water-Water treatment systems.**

(1) Operators of Systems that provide water treatment plants that use conventional coagulation, settling, softening or filtration shall must keep:

(+A) a daily record of the operations performed in the treatment process;

(2B) observations, cost and occurrences related to the operation of the plant; and

(3C) the control tests and laboratory checks previously described in OAC 252:631-3-10.

(2) In addition, water treatment plants designed for turbidity and microbial removal must keep:

(4A) the number of filtered water turbidity samples taken during the month;

(5B) the number and percentage of turbidity samples which that are less than or equal to the standards; and

(6C) the date and value of any turbidity measurements which that exceed one (1) and five (5) NTU. Where continuous monitoring is used, measurements must be recorded every four (4) hours during plant operation.

(ed) **Groundwater systems.** Operators of groundwater systems shall must keep a daily record of all well operations and maintenance of the system, in addition to the process control tests and laboratory checks required for groundwater-ground water supplies. Community and NTNC systems must submit monthly operational reports to DEQ.

(de) **Purchase water systems.** Operators of community systems that purchase water community systems that as their sole source and provide supplemental chlorination must submit a monthly record-operational report to the DEQ of the operation of the system, in addition to required laboratory checks. Monthly reports are not required from purchase water systems that do not add chlorine-a disinfectant.

(e) **Special reports.** Each system must report to the DEQ by the end of the next business day if any of the following occur:

(1) Waterborne disease outbreak;

(2) Turbidity exceeds 5 NTU;

(3) Chlorine residual falls below 0.2 mg/l in the water entering the distribution and whether the residual was restored to at least 0.2 mg/l within 4 hours.

(f) **Reporting of additional monitoring.** Additional monitoring, listed in Appendix B, must be reported to DEQ in accordance with 40 CFR Part 141, Subpart C at the end of each monitoring period.

(g) **Record keeping.** All records must be available for inspection by the DEQ and maintained for at least 10-ten (10) years unless otherwise specified.

### 252:631-3-12. Reporting requirements for Control of lead and copper

Water-PWS systems must submit a lead and copper site sampling plan with criteria for choosing sites. Systems must collect and report the results of all lead and copper samples in accordance with 40 CFR Part 141, Subpart I within 10-ten (10) days after the end of the monitoring period. They must certify that each first draw sample is 1 liter in volume, has stood motionless for 6 hours in the pipe, and that residents who pull samples have been properly informed of the procedure. The system must report the 90th percentile levels, and may ask the DEQ to assist with calculations. Systems must also report any

site that was not sampled during the previous sampling period and why, the pH of tap samples and other required parameters, and the results of all POE samples. Systems that exceed lead and copper action levels must submit the following:

- (1) a source water monitoring report which includes results of all source water samples within 10 days following the monitoring period and any site that was not sampled during the previous sampling period and an explanation for not sampling;
- (2) a corrosion control treatment report which includes corrosion control tests, corrosion control recommendations, evaluations of effectiveness of corrosion control where required, and certification of installation of treatment where required;
- (3) a source water treatment report which includes recommendations regarding source water treatment and a letter certifying installation of treatment within 24 months;
- (4) a lead service line replacement plan according to 40 CFR 141.84; and
- (5) an annual certification that public education materials were distributed as long as the lead action level is exceeded.

**252:631-3-13. Disinfection byproduct reporting  
Disinfectant residuals, disinfection  
byproducts, and disinfection byproduct  
precursors**

(a) ~~When.~~ Systems must monitor and report to the DEQ within 10 days after the end of each monitoring period in which samples were collected. See Appendix B for applicability.

(b) ~~Disinfection byproducts.~~ Systems must report the information specified in the following:

- (1) Systems monitoring for TTHM and HAA5 on a quarterly or more frequent basis must report the number of samples taken during the last quarter, the location, date, and result of each sample taken during the last quarter, the average of all samples taken in the last quarter, the annual average of the quarterly averages of this section for the last four quarters, and whether the MCL was exceeded;
- (2) Systems monitoring for TTHMs and HAA5 less frequently than quarterly (but at least annually) must report the number of samples taken during the last year, the location, date, and result of each sample taken during the last quarter, the average of all samples taken over the last year, and whether the MCL was exceeded;
- (3) Systems monitoring for TTHMs and HAA5 less frequently than annually must report the location, date, and result of the last sample taken and whether the MCL was exceeded;
- (4) Systems monitoring for chlorite must report the number of samples taken each month for the last 3 months, the location, date, and result of each sample taken during the last quarter, for each month in the reporting period, the average of all samples taken in each month, and whether the MCL was exceeded, and in which month it was exceeded;

(5) Systems monitoring for bromate must report the number of samples taken during the last quarter, the location, date, and result of each sample taken during the last quarter, the average of the monthly averages of all samples taken in the last year, and whether the MCL was exceeded; and

(6) The State may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(c) ~~Disinfectants.~~ Systems must report the information specified in the following:

(1) Systems monitoring for chlorine or chloramines must report the number of samples taken during each month of the last quarter, the monthly average of all samples taken in each month for the last 12 months, the average of all monthly averages for the last 12 months, and whether the MRDL was exceeded;

(2) Systems monitoring for chlorine dioxide must report the dates, results, and locations of samples taken during the last quarter, whether the MRDL was exceeded, and whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute; and

(3) The DEQ may choose to perform calculations and determine whether the MRDL was exceeded, in lieu of having the system report that information.

(d) ~~Disinfection byproduct precursors and enhanced coagulation or enhanced softening.~~ Systems must report the information specified in the following:

(1) Systems monitoring monthly or quarterly for TOC and required to meet the enhanced coagulation or enhanced softening requirements must report the number of paired (source water and treated water, prior to continuous disinfection) samples taken during the last quarter, the location, date, and result of each paired sample and associated alkalinity taken during the last quarter, the average of the percent reduction of TOC for each paired sample and the required TOC percent removal for each month in the reporting period that paired samples were taken, calculations for determining compliance with the TOC percent removal requirements, and whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements for the last four quarters;

(2) Systems monitoring monthly or quarterly for TOC and meeting one or more of the alternative compliance criteria must report the alternative compliance criterion that the system is using, the number of paired samples taken during the last quarter, the location, date, and result of each paired sample and associated alkalinity taken during the last quarter, the running annual average based on monthly averages (or quarterly samples) of source water TOC or of treated water TOC, the running annual average based on monthly averages (or quarterly samples) of source water SUVA or of treated water SUVA, the running annual average of source water alkalinity and of treated water alkalinity, the running annual average for both TTHM and HAA5, the running annual average of the amount of

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magnesium hardness removal (as CaCO<sub>3</sub>, in mg/L, and whether the system is in compliance with the particular alternative compliance criterion; and

(3) ~~The DEQ may choose to perform calculations and determine whether the treatment technique was met, in lieu of having the system report that information disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors in accordance with 40 CFR Part 141 Subpart C and L.~~

### **252:631-3-14. Conventional filtration systems, reporting and recordkeeping requirements [REVOKED]**

~~(a) A PWS system that provides filtration must submit turbidity measurements, in accordance with OAC 252:631-3-10(2)(C), on the DEQ approved Monthly Operational Report.~~

~~Information that must be reported includes:~~

- ~~(1) The total number of filtered water turbidity measurements taken during the month;~~
- ~~(2) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits; and~~
- ~~(3) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the DEQ.~~

~~(b) A PWS system that provides filtration treatment or direct filtration must also report monthly to the State the following information for systems serving 10,000 persons or more beginning January 1, 2002 and for systems serving less than 10,000 persons beginning January 1, 2004. Systems must maintain the results of individual filter monitoring for at least three years. Systems must report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Systems must report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (1) through (4) of this subsection. Systems that use lime softening may apply to DEQ for alternative exceedance levels for the levels specified in paragraphs (1) through (4) of this subsection if they can demonstrate that higher turbidity levels in individual filters are due to lime carry-over only and not due to degraded filter performance. For any individual filter that has a measured turbidity level of greater than:~~

- ~~(1) 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. Also, the system must either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.~~

~~(2) 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system must report the filter number, the turbidity, and the date(s) on which the exceedance occurred. Also, the system must either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.~~

~~(3) 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three months in a row, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. Also, the system must conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self-assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.~~

~~(4) 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two months in a row, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. Also, the system must arrange for a comprehensive performance evaluation by the DEQ, or a third party approved by the DEQ, no later than 30 days following the exceedance and have the evaluation completed and submitted to the DEQ no later than 90 days following the exceedance.~~

### **252:631-3-15. Plugging abandoned wells**

Plug PWS systems must plug all unused or dry water wells, water test wells, or water test holes promptly according to the OWRB well-plugging rules (OAC 785:35) to protect the water-bearing formation.

### **252:631-3-16. Flushing of dead-ends**

Avoid PWS systems must avoid dead-ends in the distribution system. Where a dead-end main exists, it must be equipped with a valve or other arrangement for flushing. Flush until the water is clear or a chlorine residual is found. Flush every ninety (90) days or more often where conditions require.

### **252:631-3-17. Water system connections**

No PWS system shall PWS systems must not allow the connection of a new customer without an approved sewage disposal system, as defined in OAC 252:641 (Individual and Small Public On-Site Sewage Disposal Systems) or OAC 252:656 (Water Pollution Control Construction).

**252:631-3-19. Wastewater**

- (a) **Sanitary waste.** All sanitary and laboratory chemical wastewater must be discharged to a sanitary sewer collection system or to an approved on-site wastewater disposal system.
- (b) **Treatment plant wastewater and sludge.** Disposal of wastewater and ~~sludge—residuals~~ from treatment units (filter backwash water, clarifier blow-off, etc.) must be according to OAC 252:605 (Discharge Standards) and OAC 252:626 (PWS Construction). For information about permits and requirements, contact the DEQ Water Quality Division.

**252:631-3-20. Water pressure**

All PWS systems must maintain a water pressure of at least ~~25—twenty-five (25)~~ psi at all service connections.

**252:631-3-21. Public water supply annual service fees**

- (a) Each PWS system shall be charged an annual fee (see 27A O.S. § 2-6-306).
- (b) ~~Actual~~The annual fee shall be calculated using the actual costs of services ~~shall be calculated by the sum of the following costs, as applicable follows:~~
  - (1) ~~Bacteriological costs equal the number of samples analyzed at \$10 each;~~
  - (2) ~~Volatile organic chemical costs equal the number of sources in the water system (i.e., number of wells and number of surface sources) at \$20 each (representative annual cost per sample which is collected and analyzed only once every three years, applicable to ground and surface systems only);~~
  - (3) ~~Inorganic chemical costs equal \$86 (representative annual cost per sample which is collected and analyzed only once every three years, applicable to ground and surface systems only);~~
  - (4) ~~Organic chemical costs equal \$172 (representative annual cost per sample which is collected and analyzed only once every three years, applicable to surface systems only);~~
  - (5) ~~Trihalomethane costs equal \$145 for ground systems or \$580 for surface systems which serve a population of 10,000 or greater;~~
  - (6) ~~Radiochemical costs equal \$214 (applicable to ground and surface systems only);~~ Laboratory analysis fees, for parameters analyzed by the State Environmental Laboratory, shall be charged as specified in OAC 252:305. "Laboratory Services";
    - (7) Inspection service costs equal \$25 for purchase systems, \$50 for ground systems or \$100 for surface systems and groundwater under the direct influence of surface water systems; and
    - (8) Federal program requirement costs for tracking and reporting, and enforcement and technical assistance costs (applicable to community systems only and non-transient non-community systems) equal \$186 for purchase systems, \$815 for ground systems or \$3479 for surface

systems and groundwater under the direct influence of surface water systems.

- (c) Each system shall be charged the actual cost for regulatory services as calculated according to OAC 252:631-3-21(b), except that:
  - (1) ~~No—no~~ system shall pay less than a minimum annual fee of \$50 for purchase water systems, \$75 for ~~groundwater—ground water~~ systems and \$150 for surface water system ~~(with the exception of state, federal and non-transient non-community systems, which shall pay actual costs of services) nor shall any system pay or~~ less than four cents (\$0.04) per service connection per month—, whichever is greater, and
  - (2) ~~No—no~~ system shall pay an annual fee increase of more than thirty cents (\$0.30) per service connection per month (with the exception of the application of the minimum fee).
  - (3) ~~The portion of the annual fee applicable for laboratory test performed the previous state fiscal year by a laboratory certified pursuant to OAC 252:300 shall be deducted from the total annual fee.~~
  - (4) A further reduction in fees will be made, beginning with the smallest residential system and continuing until all federal grant and appropriated funds are used, to the extent that the grant and appropriated money will fund the costs in excess of the previous year's fee (with the exception of those systems that are affected by the minimum fee described in OAC 252:631-3-21(e)(1).

(d) The minimum annual fees listed in OAC 252:631-3-21(c) do not apply to state, federal, tribal, and non-transient non-community systems. These systems shall pay the actual costs of services.

(e) Each system will be notified by mail of the fee due from that system by August 1 of each year. The DEQ shall mail such notice to the ~~last—most recent~~ name and address provided to the DEQ by the PWS system, however, failure to receive such notice by the system shall not operate to waive any fees due to the DEQ.

(f) Public Water Supply Laboratory Certification fees are as specified in OAC 252:300. There is no laboratory certification fee for PWS systems that pay the minimum annual PWS system regulatory service rate fee of \$0.04 per service connection per month because it is included.

**252:631-3-22. Security**  
A PWS system shall provide:

- (1) fencing with locking gates;
- (2) locks on access manholes;
- (3) locks on wellheads and well houses; and
- (4) other necessary precautions to prevent vandalism, pilfering, trespass, and sabotage.

**SUBCHAPTER 5. MINOR WATER SYSTEMS**

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### **252:631-5-1. General**

- (a) Minor water systems must submit a minimum of one (1) bacteriological sample per year. If the sample is coliform positive, then the system must continue to submit bacteriological samples until a coliform negative sample is obtained.
- (b) Systems, which operate on an intermittent or seasonal basis, shall submit bacteriological samples on two (2) consecutive days prior to placing the system into operation. The system can be placed into operation only after the samples are shown to be safe and authorization to operate is given by the local DEQ office.
- (c) Maintain a water pressure of at least twenty-five (25) psi at all service connections.
- (d) Where chlorination is practiced, a chlorine residual of at least 1 mg/l must be maintained at the POE and at least 0.2 mg/l at the farthest point in the distribution system. The residual disinfectant concentration at the POE and at the farthest point in the distribution system must be monitored once per day.
- (e) Keep records of all operational requirements at the facility.

### **252:631-5-2. Surface water, ground water under the direct influence of surface water, and springs**

- (a) **Slow sand filtration.**
  - (1) Finished water turbidity must be measured once per day while the plant is in operation.
  - (2) The finished water turbidity must be below one (1.0) NTU in ninety-five percent (95%) of monthly samples.
  - (3) The finished water turbidity must never exceed five (5) NTU.
- (b) **Conventional Filtration.** Conventional filtration systems that use coagulation, settling, softening and filtration must do the following while the plant is in operation:
  - (1) Finished water turbidity must be measured once per day.

- (2) The finished water turbidity must be below 0.5 NTU in ninety-five percent (95%) of monthly samples.
- (3) The finished water turbidity must never exceed five (5) NTU. If the turbidity exceeds five, the DEQ must be notified immediately.
- (4) Perform the following process control tests on the filtered water once a day:
  - (A) Alkalinity - Phenolphthalein (P);
  - (B) Alkalinity - Total;
  - (C) Hardness (where softening is used); and
  - (D) pH value;
- (5) Perform Jar tests as needed to determine the optimum coagulant dosages for plant control and operation to meet turbidity requirements.

### **252:631-5-3. Groundwater supplies**

The following tests are required.

- (1) Alkalinity and pH must be determined at least quarterly; and
- (2) Those systems located between 100 and 300 feet from gasoline storage tanks require quarterly VOC monitoring. If the facility has three (3) years of compliant samples, the monitoring may be reduced to annual monitoring.

### **252:631-5-4. Special tests**

Systems that treat for the removal of regulated contaminants must monitor for those contaminants weekly in addition to collecting compliance samples.

### **252:631-5-5. Security**

Minor water systems must provide:

- (1) fencing with locking gates;
- (2) locks on access manholes;
- (3) locks on wellheads and well houses; and
- (4) other necessary precautions to prevent vandalism, pilfering, trespass, and sabotage.

APPENDIX A. PRIMARY DRINKING WATER STANDARDS [REVOKED]

Name Of Contaminant	Maximum Contaminant Level (MCL)
<b>MICROORGANISMS</b>	
Total coliform	No more than one positive sample per month (or over 5% of samples for systems over 33,000), nor a positive repeat sample
Fecal coliform	Any fecal coliform positive repeat sample or any total coliform positive following a fecal coliform positive routine sample constitutes an acute MCL violation.
E. coli	Any E.coli positive repeat sample or any total coliform positive following an E. coli positive routine sample constitutes an acute MCL violation.
<i>Giardia lamblia</i> and viruses	99.9% inactivation (treatment technique)
Viruses	99.99% inactivation (treatment technique)
<b>INORGANIC CHEMICALS</b>	
Antimony	0.006 mg/l
Arsenic	0.050 mg/l
Asbestos	7 million fibers/l (> 10 um long)
Barium	2.0 mg/l
Beryllium	0.004 mg/l
Cadmium	0.005 mg/l
Chromium	0.1 mg/l
Copper	1.3 mg/l (action level)
Cyanide	0.2 mg/l
Fluoride	4 mg/l
Lead	0.015 mg/l (action level)
Mercury	0.002 mg/l
Nitrate	10 mg/l
Nitrite	1 mg/l
Total Nitrogen (Nitrate and Nitrite)	10 mg/l
Selenium	0.05 mg/l
Thallium	0.002 mg/l
<b>ORGANIC CHEMICALS</b>	
<b>Volatile Organic Compounds (VOC)</b>	
Benzene	0.005 mg/l
Carbon tetrachloride	0.005 mg/l
Dichloromethane	0.005 mg/l
1,2-Dichloroethane	0.005 mg/l
Trichloroethylene	0.005 mg/l
Para-Dichlorobenzene	0.075 mg/l
1,1-Dichloroethylene	0.007 mg/l
1,2,4-Trichlorobenzene	0.07 mg/l
1,1,1-Trichloroethane	0.2 mg/l
1,1,2-Trichloroethane	0.005 mg/l
Cis-1,2-Dichloroethylene	0.07 mg/l
1,2-Dichloropropane	0.005 mg/l

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Name Of Contaminant	Maximum Contaminant Level (MCL)
Ethylbenzene	0.7 mg/l
Monochlorobenzene	0.1 mg/l
O-Dichlorobenzene	0.6 mg/l
Styrene	0.1 mg/l
Tetrachloroethylene	0.005 mg/l
Toluene	1 mg/l
Trans-1,2-Dichloroethylene	0.1 mg/l
Vinyl chloride	0.002 mg/l
Xylenes(total)	10 mg/l
<b>Synthetic Organic Compounds (SOC)</b>	
Alachlor	0.002 mg/l
Atrazine	0.003 mg/l
Benzo(a)pyrene	0.0002 mg/l
Carbofuran	0.04 mg/l
Chlordane	0.002 mg/l
Dalapon	0.2 mg/l
Di(2-ethylhexyl) Adipate	0.4 mg/l
Di(2-ethylhexyl) Phthalates	0.006 mg/l
Dibromochloropropane (DBCP)	0.0002 mg/l
Dinoseb	0.007 mg/l
Diquat	0.02 mg/l
Endothall	0.1 mg/l
Endrin	0.002 mg/l
Ethylene dibromide	0.00005 mg/l
Glyphosate	0.7 mg/l
Heptachlor	0.0004 mg/l
Heptachlor epoxide	0.0002 mg/l
Hexachlorobenzene	0.001 mg/l
Hexachlorocyclopentadiene	0.05 mg/l
Lindane	0.0002 mg/l
Methoxychlor	0.04 mg/l
Oxamyl (Vydate)	0.2 mg/l
Picloram	0.5 mg/l
Polychlorinated biphenyls (PCBs)	0.0005 mg/l
Pentachlorophenol	0.001 mg/l
Simazine	0.004 mg/l
Toxaphene	0.003 mg/l
2,3,7,8-TCDD (Dioxin)	3 X 10 <sup>-8</sup> mg/l
2,4-D	0.07 mg/l
2,4,5-TP (Silvex)	0.05 mg/l
<b>DISINFECTANTS &amp; DBPs</b>	
Chlorine	MRDL-4 mg/l (as CL <sub>2</sub> ) (eff. 1/1/2002 > 10,000; 1/1/2004 < 10,000)
Chloramines	MRDL-4 mg/l (as CL <sub>2</sub> ) (eff. 1/1/2002 > 10,000; 1/1/2004 < 10,000)
Chlorine dioxide	MRDL -0.8 mg/l (as CLO <sub>2</sub> ) (eff. 1/1/2002 > 10,000; 1/1/2004 < 10,000)
Total trihalomethanes	0.1 mg/l (systems over 10,000); then 0.080 mg/l (1/1/2002 > 10,000; 1/1/2004 < 10,000)

HAA5	0.1 mg/l (systems over 10,000); then 0.060 mg/l (eff. 1/1/2002 > 10,000) (eff. 1/1/2004 < 10,000)
Chlorite	1.0 mg/l (eff. 1/1/2002 > 10,000; 1/1/2004 < 10,000)
Bromate	0.010 mg/l (eff. 1/1/2002 > 10,000; 1/1/2004 < 10,000)
<b>RADIONUCLIDES</b>	
Beta particle and photon activity	4 mrem
Combined Ra-226 & Ra-228	5 pCi/L
Gross alpha (not radon or uranium)	15 pCi/L
<b>TURBIDITY (treatment technique)</b>	
Slow sand filter	1.0 NTU
Rapid rate sand filter	0.5 NTU; never > 5 NTU 0.3 NTU; never > 1 NTU (effective 1/1/2002 > 10,000) (effective 1/1/2004 < 10,000)

**Secondary Drinking Water Standards**

Name Of Contaminate	Level
Aluminum	0.05-0.2 mg/l
Chloride	250 mg/l
Color	15 color units
Copper	1.0 mg/l
Corrosivity	Non-corrosive
Fluoride	2.0 mg/l
Foaming Agents	0.5 mg/l
Iron	0.3 mg/l
Manganese	0.05 mg/ l
Odor	3 threshold odor number
pH	6.5 - 8.5
Silver	0.1 mg/l
Sulfate	250 mg/l
Total dissolved solids	500 mg/l
Zinc	5 mg/l

APPENDIX B. MONITORING REQUIREMENTS [REVOKED]

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring																																																				
<p><b>Total Coliform</b></p> <p>APPLIES TO: all PWS systems</p> <p>References: for monitoring, see 40 CFR 141.21; for the MCL, see 40 CFR 141.63</p>	<p>Sampling Plan. All systems must submit a site sampling plan to the DEQ for approval. The sites must be representative of the whole distribution system.</p> <p>Community systems must sample according to their plan, with the following number of samples:</p> <p>Population and monthly Total coliform samples</p> <table border="0"> <tr><td>up to 1,000</td><td>.....1</td><td>25,001 to 33,000</td><td>.....30</td></tr> <tr><td>1,001 to 2,500</td><td>.....2</td><td>33,001 to 41,000</td><td>.....40</td></tr> <tr><td>2,501 to 3,300</td><td>.....3</td><td>41,001 to 50,000</td><td>.....50</td></tr> <tr><td>3,301 to 4,100</td><td>.....4</td><td>50,001 to 59,000</td><td>.....60</td></tr> <tr><td>4,101 to 4,900</td><td>.....5</td><td>59,001 to 70,000</td><td>.....70</td></tr> <tr><td>4,901 to 5,800</td><td>.....6</td><td>70,001 to 83,000</td><td>.....80</td></tr> <tr><td>5,801 to 6,700</td><td>.....7</td><td>83,001 to 96,000</td><td>.....90</td></tr> <tr><td>6,701 to 7,600</td><td>.....8</td><td>96,001 to 130,000</td><td>.....100</td></tr> <tr><td>7,601 to 8,500</td><td>.....9</td><td>130,001 to 220,000</td><td>.....120</td></tr> <tr><td>8,501 to 12,900</td><td>.....10</td><td>220,001 to 320,000</td><td>.....150</td></tr> <tr><td>12,901 to 17,200</td><td>.....15</td><td>320,001 to 450,000</td><td>.....180</td></tr> <tr><td>17,201 to 21,500</td><td>.....20</td><td>450,001 to 600,000</td><td>.....210</td></tr> <tr><td>21,500 to 25,000</td><td>.....25</td><td>600,001 to 780,000</td><td>.....240</td></tr> </table> <p>Non-community systems using surface water, or using only ground water and serving more than 1000 population during any month, must sample as a community system.</p> <p>Non-community systems using only ground water and serving 1,000 population or fewer must sample each calendar quarter.</p> <p>Minor water systems must be sampled at least annually.</p> <p>Results of all routine and repeat samples not invalidated by the DEQ must be used to determine compliance with the MCL for total coliform.</p>	up to 1,000	.....1	25,001 to 33,000	.....30	1,001 to 2,500	.....2	33,001 to 41,000	.....40	2,501 to 3,300	.....3	41,001 to 50,000	.....50	3,301 to 4,100	.....4	50,001 to 59,000	.....60	4,101 to 4,900	.....5	59,001 to 70,000	.....70	4,901 to 5,800	.....6	70,001 to 83,000	.....80	5,801 to 6,700	.....7	83,001 to 96,000	.....90	6,701 to 7,600	.....8	96,001 to 130,000	.....100	7,601 to 8,500	.....9	130,001 to 220,000	.....120	8,501 to 12,900	.....10	220,001 to 320,000	.....150	12,901 to 17,200	.....15	320,001 to 450,000	.....180	17,201 to 21,500	.....20	450,001 to 600,000	.....210	21,500 to 25,000	.....25	600,001 to 780,000	.....240	<p>Repeat samples. Collect within 24 hours of being notified that a routine sample is total coliform positive. The DEQ may extend the 24-hour limit if the system cannot collect and submit repeat samples for reasons beyond its control.</p> <p>Number. Systems that collect more than one routine sample per month must collect at least three repeat samples for each positive sample, and all others must collect at least four.</p> <p>Location. Take at least one repeat sample from the original coliform positive site and from taps within five service connections upstream and downstream of the original sampling site. The DEQ may waive one sample if the site is within one tap of the end of the distribution system. Collect all repeat samples on the same day, or within four days for systems with a single connection.</p> <p>Repeat this process until total coliforms are not found in any repeat sample. Systems that collect five or fewer samples per month that have one or more positive samples must collect at least five routine samples during the next month, unless waived by the DEQ following a site visit or if the problem is deemed corrected by the DEQ before the end of the</p>	<p>Upon written approval of the DEQ:</p> <p>Community systems serving 1,000 population or fewer, with a total coliform MCL or monitoring violations for three years, and with a sanitary survey that shows the system is supplied solely by protected ground water free of sanitary defects, may reduce the frequency to one per quarter.</p> <p>Non-community systems using only groundwater. The DEQ may reduce the frequency to one per year if a sanitary survey shows the system is free of critical sanitary defects.</p>
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Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p><b>Turbidity</b></p> <p><b>APPLIES TO:</b> All Community, Non-Community, NTNC systems using filtration</p>	<p><b>Frequency:</b> Highest combined finished water turbidity reading recorded every four hours of operation.</p> <p>Systems are required to monitor individual filter turbidity every 15 minutes beginning January 1, 2002 for systems serving a population of 10,000 or greater and beginning January 1, 2004 for systems serving a population of less than 10,000.</p>	<p>by the DEQ before the end of the next month. A routine sample collected within five service connections of the initial positive sample may be used as a repeat sample.</p> <p>Any positive total coliform sample must be analyzed for fecal coliform.</p>	<p>Systems using slow sand filtration may reduce the sampling frequency to daily if it is determined by the DEQ that less frequent sampling is sufficient to determine filter performance.</p>
<p><b>Inorganic Chemicals</b></p> <p>Antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium</p> <p><b>APPLIES TO:</b> Community; NTNC Ref.: 40 CFR 141.23(c)</p>	<p><b>Frequency:</b> surface water systems, once a year; groundwater systems, once every three years.</p> <p><b>Location:</b> Sample at each POE; samples must be representative of each source after treatment.</p> <p>If a system samples more frequently than annually, compliance shall be determined on the running annual average at any sampling point. If a system samples on an annual or less frequent schedule, compliance shall be determined on the average of an initial and confirmation sample.</p>	<p>If a MCL is exceeded, sample quarterly, beginning with the next quarter. Groundwater systems must sample for two consecutive quarters and surface water systems must sample for four consecutive quarters.</p> <p>If the results indicate that the sources are reliable and consistently below the applicable standard, request a waiver to reduce sampling to the original frequency.</p>	<p>The monitoring frequency may be reduced to annually. Water systems may apply to the state for a waiver from initial and repeat sampling frequencies. If the results of three years of sampling have no detections, the system may apply for a waiver from monitoring. These waivers must be renewed every 9 years. Waivers are contaminant specific and must be based upon a vulnerability assessment based on lack of use of the chemicals in the area or physical condition of the well and the area surrounding it.</p>
<p><b>Inorganic Chemicals</b></p> <p>Asbestos</p> <p><b>APPLIES TO:</b> Community; NTNC Ref.: 40 CFR 141.23(b)</p>	<p>Systems that are vulnerable to asbestos must monitor for asbestos at a tap served by asbestos-cement pipe under conditions most conducive to asbestos contamination.</p> <p><b>Frequency:</b> once each nine years, during the first three years of each nine-year compliance cycle. Vulnerability is determined by corrosion of asbestos-cement pipe or the presence of asbestos in source water.</p>		<p>Systems not vulnerable to asbestos may apply to the DEQ for a monitoring waiver.</p>

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p><b>Inorganic Chemicals</b> Nitrate &amp; nitrite</p> <p><b>APPLIES TO:</b> Community; NTNC; Non-community</p>	<p><b>Frequency:</b> Community and NTNC, monitor annually for groundwater systems and quarterly for surface water systems. Non-community systems monitor annually.</p> <p><b>Location:</b> at each POE; sample must be representative of each source after treatment.</p> <p><b>Ref.:</b> 40 CFR 141.23(d) &amp; (e)</p>	<p>If any sample is 50 % or more of the MCL, sample quarterly for at least one year.</p>	<p>Surface water systems with less than 50 % of the MCL and groundwater systems which are reliably and consistently below the MCL may be reduced to annual samples. The annual sample must be collected during the quarter which yielded the highest results during initial monitoring.</p> <p>Systems that disinfect are exempt from nitrite.</p>
<p><b>Inorganic Chemicals</b> Sodium</p> <p><b>APPLIES TO:</b> Community</p>	<p>Sample at POE annually for surface water systems, and every three years for groundwater systems.</p> <p><b>Ref.:</b> 40 CFR 141.41</p>		
<p><b>Inorganic Chemicals</b> Sulfate</p> <p><b>APPLIES TO:</b> Community; NTNC</p>	<p>Sample at POE which is representative of each source after treatment for sulfate.</p> <p><b>Ref.:</b> 40 CFR 141.40(n)</p>		
<p><b>Radiochemical</b></p> <p><b>APPLIES TO:</b> Community</p> <p><b>Ref.:</b> 40 CFR 141.26</p>	<p>Monitor every 4 years by analyzing 4 consecutive quarterly samples or a composite of 4 consecutive quarterly samples.</p> <p>Community systems using surface water sources and serving more than one-hundred thousand (100,000) persons must also analyze for man-made beta and photon emitters.</p>	<p>If gross alpha exceeds 5 pCi/l, analyze for radium-226.</p> <p>Monitor annually if radium-226 exceeds 3 pCi/l.</p>	<p>If less than 50% of the MCL, a single sample may be approved instead of quarterly samples.</p> <p>If gross alpha is less than 5 pCi/l at the 95 % confidence level, radium may be waived.</p>
<p><b>Synthetic organics</b></p> <p><b>APPLIES TO:</b> Community; NTNC.</p> <p><b>Ref.:</b> 40 CFR 141.24(h)</p>	<p>Monitor quarterly for pesticides and other synthetic organic contaminants unless granted a waiver. Sample each POE, representative of each source after treatment. These samples must be collected during the quarter which previously yielded the highest analytical results. If a system samples more frequently than annually, compliance shall be determined on the running annual average of all samples at each sampling point. If a system samples on an annual or less frequent schedule, compliance shall be determined on the average of an initial and confirmation sample.</p>		<p>The monitoring frequency may be reduced to annually. Waiver systems may apply to the state for a waiver from initial and repeat sampling frequencies. If the results of three years of sampling have no detections, the system may apply for a waiver from monitoring. These waivers must be renewed every 9 years. Waivers are contaminant specific and must be based upon a vulnerability assessment based on lack of use of the chemicals in the area or physical condition of the well and the area surrounding it.</p>
<p><b>Volatile organic compounds (VOCs)</b> other than THMs</p>	<p>Sample at each POE, representative of each source after treatment. The monitoring shall consist of four consecutive quarterly samples during each three-year compliance period.</p>	<p>If contaminants are detected (&gt;0.5ppb), sample quarterly at each point with a detection, beginning with the next quarter. Groundwater systems must sample for two</p>	<p>After a minimum of three years of annual sampling, a groundwater system with no previous detections of any contaminant may collect one sample each compliance period. Waiver systems may apply to the state for a waiver from initial and repeat sampling</p>

<b>Contaminant</b>	<b>Routine Monitoring</b>	<b>Additional Monitoring</b>	<b>Reduced monitoring</b>
<p><b>APPLIES TO:</b> Community; NTNC.</p> <p>Ref.: 40 CFR 141.24</p>	<p>All samples analyzed in a quarter must be used to average the quarter.</p>	<p>quarters and surface water systems must sample for four quarters to establish a baseline. If the results indicate that the sources are reliably and consistently below the applicable standard, the sampling frequency may be reduced to annually. These samples must be collected during the quarter which previously yielded the highest analytical results. If a system samples more frequently than annually, compliance is determined by either the running annual average or the average of each sampling point confirmation sample.</p>	<p>frequencies. These waivers must be renewed for each compliance period. Waivers are contaminant specific and must be based upon a vulnerability assessment. Waivers may be granted based on lack of use of the chemicals in the area or physical condition of the well and the area surrounding it. If the results of initial monitoring have no detections, the system may apply for a waiver from monitoring. A waiver shall be effective for no more than six years. If a waiver is granted, groundwater systems must take one sample at each sampling point during the time when the waiver is effective (one sample each six years) and update its vulnerability assessment. Surface water systems which are granted a waiver shall monitor at a frequency determined by the state (if any) and update the systems's vulnerability assessment each compliance period.</p>
<p><b>Unregulated VOCs</b> Listed at 40 CFR 141.40 (e) &amp; (f)</p> <p><b>APPLIES TO:</b> Community; NTNC</p>	<p>Sample each source at least once. The EPA requires data so they may determine whether to establish MCLs.</p>	<p>Confirmation of the presence of any volatile organic chemical in any source will require quarterly monitoring of that source.</p>	<p>Systems not vulnerable to potential contamination may obtain a waiver. A waiver may be granted if the contaminant has never been used in the area, or if previous analytical results indicate no detection of the chemical (&lt;0.5 ug/l) and by considering the environmental transport and persistence of the contaminant, number of persons served, and degree of wellhead or watershed protection.</p>
<p><b>Unregulated organic chemicals</b> Aldicarb, Aldrin, Butachlor, Carbaryl, Dicamba, Dieldrin, 3-Hydroxycarbofuran, Methomyl, Metolachlor, Metribuzin, Propachlor</p> <p><b>APPLIES TO:</b> Community;</p>	<p>Take four consecutive samples at each POE which is representative of each source after treatment. Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.</p> <p>Ref.: 40 CFR 141.40(n)</p>		

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring								
<p><b>NTNC</b></p> <p><b>Lead and copper</b></p> <p><b>APPLIES TO:</b> Community; NTNC.</p> <p>Ref.: 40 CFR 141.86</p>	<p>Complete a materials evaluation of the distribution system to find a pool of target sites. Sample sites for lead and copper should contain copper pipes with lead solder installed after 1982 or lead pipes or lead service lines. Sample sites for community systems must be selected based on targeted single family structures (Tier 1) or multi-family structures (Tier 2) if they make up more than 20 % of the taps. Sample sites for NTNC systems shall consist of buildings which meet the same criteria as above. If the system is unable to find enough sites they may use sites constructed before 1983 (Tier 3). Community systems with insufficient Tier 1 or Tier 2 sites or NTNC systems with insufficient Tier 1 sites must document the lack of potential sites. Water systems with lead service lines must pull at least 50 % of their samples from lead lines and 50% from copper lines with lead solder or document why they cannot do so. Sample sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants. Samples must be first draw samples that have stood motionless in the lines for at least 6 hours. The sample shall be one liter in volume and taken from a kitchen or bathroom cold water tap. First draw samples from a non-residential building shall be collected at an interior tap from which water is typically drawn for consumption. Lead service line samples for single family residences may be taken after flushing until the water temperature changes. Follow-up samples must be taken at the same place as previous samples.</p> <p>Initial monitoring shall begin during the first year of operation of a new system. All systems must monitor for 2 consecutive 6 month periods. The number of sites:</p> <table border="0"> <tr> <td>System Size</td> <td>Sites</td> </tr> <tr> <td>&gt; 100,000</td> <td>100</td> </tr> <tr> <td>10,001-100,000</td> <td>60</td> </tr> <tr> <td>3,301-10,000</td> <td>40</td> </tr> </table>	System Size	Sites	> 100,000	100	10,001-100,000	60	3,301-10,000	40	<p>All large systems and all medium and small systems which exceed the action levels for lead or copper must conduct corrosion control studies as required in 40 CFR 141 Subpart I.</p> <p>Systems which fail to meet the action levels for lead or copper at the tap must sample source water for lead and copper within 6 months. Any system which installs source water treatment must collect samples from each point of entry into the distribution system for 2 consecutive 6 month periods.</p>	<p>A small or medium system which meets the action levels or optimum range of water quality values for 2 consecutive 6 month periods may reduce the frequency of sampling to once per year. A small or medium system which meets the action levels or optimum range of water quality values for 3 years may reduce the frequency to once per 3 years. All samples must be taken from the pool of target sites and if the system monitors annually or less, the samples must be taken during June, July, August, or September.</p> <p>The number of sample sites is ½ of the number of routine sites, but not less than 5.</p> <p>All systems which are on reduced monitoring that exceed action levels or exceed water quality parameters must resume the standard monitoring frequency. Any additional monitoring sites will be used in calculation of the 90th percentile.</p>
System Size	Sites										
> 100,000	100										
10,001-100,000	60										
3,301-10,000	40										
<p><b>Lead and Copper, continued</b></p>											

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p><b>Water Quality Parameters</b> pH, Alkalinity, etc.</p> <p><b>APPLIES TO:</b> All large systems and those small and medium systems which exceed the action levels for lead or copper</p> <p>Ref.: 40 CFR 141.87</p>	<p>501-3,300 20 101-500 10 &lt; 100 5</p> <p>Sample at sites representative of the distribution system during the monitoring period in which the action level was exceeded. Samples taken at the POE must be representative of each of the sources after treatment. Systems must collect 2 samples at each POE and 2 tap water samples during each monitoring period from:</p> <p>System Size Sites &gt; 100,000 25 10,001 - 100,000 10 3,301 - 10,000 3 501 - 3,300 2 &lt; 500 1</p> <p>The parameters are: 1. pH 2. Alkalinity 3. Orthophosphate (where added) 4. Silica (where added) 5. Calcium 6. Conductivity 7. Water temperature</p> <p>Monitoring at the tap following corrosion control, after the DEQ specifies the values for water control parameters, shall be the same as above. Collect 1 sample every 2 weeks at the POE for:</p> <ol style="list-style-type: none"> <li>1. Ph</li> <li>2. dose rate for alkalinity adjustment</li> <li>3. alkalinity</li> <li>4. dose rate of inhibitor</li> <li>5. orthophosphate (where added)</li> <li>7. silica (where added)</li> </ol>		<p>The monitoring schedule shall be the same as in routine monitoring. The reduced number of sites for systems which maintain the range of values on the corrosivity chart for 2 consecutive 6 month periods is as follows.</p> <p>System Size Sites &gt; 100,000 10 10,001 - 100,000 7 3,301 - 10,000 3 501 - 3,300 2 101 - 500 1 &lt; 100 1</p> <p>Any system which does not exceed the lead and copper action level for 3 years, may reduce the sampling frequency to once per 9 years. Any system which fails to operate within the proper range must resume the standard sampling frequency.</p> <p>All PWS systems that lead and copper action levels, must resume the standard sampling frequency.</p> <p>All samples collected by the system shall be considered in making treatment determinations.</p>

DISINFECTANTS AND DISINFECTANT BY- PRODUCTS Ref.: 40 CFR 141.142

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p>Chlorine and chloramines  <b>APPLIES TO:</b>                      Community;                      NTNC;                      non-community;                      minors</p>	<p>Systems must measure the residual disinfectant level at the same points in the distribution system and at the same time as total coliforms are sampled. Surface water system or groundwater under the influence of surface water serving at least 10,000 persons systems may use the results of residual disinfectant concentration instead of taking separate samples.</p>		
<p><b>Chlorite</b>  <b>APPLIES TO:</b>                      Community;                      NTNC</p>	<p>Systems that use chlorine dioxide for disinfection or oxidation must monitor for chlorite.  <b>Daily monitoring.</b> Systems must take daily samples at each POE. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations, in addition to the sample required at the entrance to the distribution system.  <b>Monthly monitoring.</b> Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three-sample sets, at the specified locations). The system may use the results of additional monitoring to meet the requirement for monitoring.</p>	<p>On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).</p>	<p>Chlorite monitoring at the entrance to the distribution system may not be reduced.                      Chlorite monitoring in the distribution system may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system has exceeded the chlorite MCL and the system has not been required to conduct additional monitoring. The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system exceeds the chlorite MCL or the system is required to conduct additional monitoring, at which time the system must revert to routine monitoring.</p>
<p><b>Chlorine Dioxide</b>  <b>APPLIES TO:</b>                      Community;                      NTNC;                      Non-community.</p>	<p>Systems that use chlorine dioxide for disinfection or oxidation must sample daily at the POE. For any daily sample that exceeds the MRDL, the system must take additional samples in the distribution system the following day, in addition to the sample required at the POE.</p>	<p>On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the</p>	

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
Chlorine Dioxide, continued		<p>distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system must take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).</p>	
<p><b>Bromate</b> <b>APPLIES TO:</b> Community; NTNC.</p>	<p>Systems that use ozone for disinfection or oxidation must take one sample per month for each treatment plant using ozone. Sample monthly at the POE while the ozonation system is operating under normal conditions.</p>		<p>Systems with an average source water bromide concentration of less than 0.05 mg/L based upon representative monthly bromide measurements for one year may reduce monitoring from monthly to once per quarter. The system may remain on reduced bromate monitoring as long as the running annual average of quarterly source water bromide concentration, is not greater than 0.05 mg/L.</p>
<p><b>TTHM and HAAS</b> <b>APPLIES TO:</b> Community systems over 10,000 pop. that disinfect Ref.: see also 40 CFR 141.30</p>	<p>Average all samples analyzed during the quarter for that quarter. Compliance is determined from the mean of the most recent four (4) quarterly averages of samples (the running annual average). Systems must analyze TTHM on a basis of at least four samples under an approved site plan per quarter</p>		<p>After one year of data collection, ground water systems with a TTHM potential less than 0.10 mg/l may be reduced to one set of samples per year.</p>

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p><b>TTHM and HAA5</b>  <b>APPLIES TO:</b> Surface water system or groundwater under the influence of surface water serving at least 10,000 persons</p>	<p>Collect four water samples per quarter per treatment plant. At least 25 percent of all samples collected each quarter must be from locations representing maximum residence time. Take the remaining samples at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods.</p>		<p>Systems with a source water annual average TOC level &lt; 4.0 mg/L before any treatment may reduce monitoring if they have monitored at least one year and the annual average of TTHM &lt; 0.040 mg/L and HAA5 &lt; 0.030mg/L may reduce monitoring to one sample per treatment plant per quarter at a distribution system location reflecting maximum residence time. Systems may remain on that reduced schedule as long as the average of all samples taken in the year is no more than 0.060 mg/L TTHM and 0.045 mg/L HAA5. Systems that exceed these levels must resume routine monitoring in the quarter immediately following the exceedance.</p>
<p><b>TTHM and HAA5</b>  <b>APPLIES TO:</b> Surface water system or groundwater under the influence of surface water serving from 500 to 9,999 persons</p>	<p>One water sample per quarter per treatment plant at locations representing maximum residence time.</p>		<p>Systems with a source water annual average TOC level &lt; 4.0 mg/L before any treatment may reduce monitoring if they have monitored at least one year and your TTHM annual average &lt; 0.040 mg/L and HAA5 annual average &lt; 0.030mg/L to one sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.                      NOTE, any surface water system or groundwater under the influence of surface water serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year. Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year is no more than 0.060 mg/L TTHMs and 0.045 mg/L HAA5. Systems that exceed these levels must resume routine monitoring in the quarter immediately following the exceedance.</p>
<p><b>TTHM and HAA5</b>  <b>APPLIES TO:</b> Surface water system or</p>	<p>One sample per year per treatment plant during month of warmest water temperature at locations representing maximum residence time</p>	<p>If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample</p>	<p>Systems with a source water annual average TOC &lt; 4.0 mg/L before any treatment, have monitored at least one year and have annual average &lt; 0.040 mg/L TTHM and &lt; 0.030mg/L HAA5 may</p>

<b>Contaminant</b>	<b>Routine Monitoring</b>	<b>Additional Monitoring</b>	<b>Reduced monitoring</b>
groundwater under the influence of surface water serving fewer than 500 persons		per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria	reduce monitoring to one sample per treatment plant per year at distribution system location reflecting maximum residence time during the month of warmest water temperature. Systems may remain on that reduced schedule as long as the sample does not exceed 0.060 mg/L TTHMs and 0.045 mg/L HAA5. Systems that do not meet these levels must resume routine monitoring in the quarter immediately following the exceedance.
<b>TTHM and HAA5</b> <b>APPLIES TO:</b> System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	One water sample per quarter per treatment plant at locations representing maximum residence time.		Systems that have monitored at least one year and their annual average <0.040 mg/L TTHM and <0.030mg/L HAA5 may reduce monitoring to to one sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. Systems may remain on that reduced schedule as long as the sample does not exceed 0.060 mg/L TTHMs and 0.045 mg/L HAA5. Systems that do not meet these levels must resume routine monitoring in the quarter immediately following the exceedance.
<b>TTHM and HAA5</b> <b>APPLIES TO:</b> System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons	One sample per year per treatment plant during month of warmest water temperature at locations representing maximum residence time.	If the sample exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets the MCL.	Systems that have monitored at least one year and have an annual average <0.040 mg/L TTHM and <0.030mg/L HAA5 for two consecutive years OR TTHM annual average <0.020 mg/L and HAA5 annual average <0.015mg/L for one year may reduce monitoring to one sample per treatment plant per three year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three-year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring. Systems may remain on that reduced schedule as long as the sample does not exceed 0.060 mg/L TTHMs and 0.045 mg/L HAA5. Systems that do not meet these levels must resume routine monitoring in the quarter immediately following the exceedance.
	Systems which disinfect and use conventional filtration		Systems with an average treated water TOC of less

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Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p><b>Disinfection By-Product Precursors (TOC)</b></p> <p><b>APPLIES TO:</b> Community; NTNC.</p> <p>Ref.: 40 CFR 141.141e</p>	<p><b>Routine Monitoring</b></p> <p>treatment must monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all systems must monitor for alkalinity in the source water prior to any treatment. Systems must take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.</p>		<p><b>Reduced monitoring</b></p> <p>than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The system must revert to routine monitoring in the month following the quarter when the annual average treated water TOC <math>\geq 2.0</math> mg/L.</p>

APPENDIX C. PUBLIC NOTICE REQUIREMENTS [REVOKED]

Violation Category	Public Notice	Method
<p><b>ONE, 24-hour notice:</b>  MCL for total coliforms, when fecal coliform or E. coli are present; or failure to test for fecal coliform or E. coli after total coliform are confirmed.  MCL for nitrate, nitrite or combined nitrate-nitrite.  MRDL for chlorine dioxide samples from the distribution system; or failure to take samples.  Waterborne disease outbreak.  Other violations or situations with potential for serious adverse human health effects from long-term exposure.</p>	<p>PWS systems must give notice within 24 hours after learning of a Category One violation.</p> <p>Posted notices must remain while the violation exists.</p>	<p>PWS systems must consult with the DEQ within 24 hours after learning of a violation to determine the approved form and manner of public notification.</p> <p>Give notice in a form and manner reasonably calculated to reach the users within 24 hours.</p> <p>To reach all persons served, do one or more of the following:  broadcast in appropriate media (such as radio and television);  post the notice in conspicuous locations; or  hand deliver notice to users.</p>
<p><b>TWO, 30-day notice:</b>  All violations of MCL, MRDL and treatment technique requirements not included in Category One.  Monitoring and testing procedure violations.  Other violations where DEQ determines that public notice may be needed due to potential health impacts and persistence of the violation.</p>	<p>PWS systems must give notice within 30 days after learning of a Category Two violation. Repeat the notice every 3 months unless otherwise authorized by the DEQ (but not less frequent than once per year). Posted notices must remain while the violation exists.</p>	<p>Give notice in a form and manner reasonably calculated to reach the users, including publishing in a daily newspaper of general circulation, within 30 days. The form and manner of the public notice may vary based on the specific situation and type of water system, but must meet the following minimum requirements unless otherwise directed by the DEQ:</p> <p><b>Community</b>  Mail or direct delivery to each customer.  Any other method determined to reach users that might not receive mail or direct delivery.</p> <p><b>Non-community</b>  Post notice in conspicuous locations frequented by users.  Mail or direct delivery to each customer.  Any other method determined to reach users that might not receive other notice.</p>
<p><b>REE, yearly notice:</b>  Monitoring violations, unless the DEQ determines they require Category Two public notice.  Failure to comply with a testing procedure.  Fluoride secondary standards violations.  Lead and copper action level violations.  Any other violations or situations determined by DEQ to require Category Three public notice.</p>	<p>PWS systems must give notice within one year after learning of a Category Three violation. Repeat the notice at least annually while the violation or situation exists.</p>	<p>Give notice in a form and manner reasonably calculated to reach the users, annually. The form and manner of the public notice may vary based on the specific situation and type of water system, but must meet the following minimum requirements unless otherwise directed by DEQ:</p> <p><b>Community</b>  Mail or direct delivery to each customer.  Any other method determined to reach users that might not receive mail or direct delivery.</p> <p>The Consumer Confidence Report may be used for the Category Three yearly and repeat notices, as long as the CCR is provided to all customers no later than 12 months after the system learns of the violation and has the proper form and content.</p> <p><b>Non-community</b>  Post notice in conspicuous locations frequented by users.  Mail or direct delivery to each customer.  Any other method determined to reach users that might not receive other notice.</p>

[OAR Docket #03-710; filed 4-21-03]

# Permanent Final Adoptions

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

[OAR Docket #03-630]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. General Operation and Procedures

310:2-3-5. ~~Obtaining copies~~ Access to Agency records pursuant to the Open Records Act [AMENDED]

Subchapter 7. Additional Procedures for Administrative Penalty Proceedings

Part 1. Environmental Health Penalties

310:2-7-3. Determining penalty [AMENDED]

### AUTHORITY:

Oklahoma State Board of Health; 51 O.S. § 24A.5(5), 2001 OK Laws, SB 948

### DATES:

#### Comment Period:

August 15, 2002 through September 19, 2002

#### Public Hearing:

September 19, 2002

#### Adoption:

September 19, 2002

#### Submitted to Governor:

September 27, 2002

#### Submitted to House:

September 27, 2002

#### Submitted to Senate:

September 27, 2002

#### Gubernatorial approval:

October 29, 2002

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

#### Final adoption:

March 25, 2003

#### Effective:

May 27, 2003

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 7. Additional Procedures for Administrative Penalty Proceedings

Part 1. Environmental Health Penalties

310:2-7-3. Determining penalty [AMENDED]

#### Gubernatorial approval:

October 29, 2002

#### Register publication:

20 Ok Reg 88

#### Docket number:

02-1420

### INCORPORATIONS BY REFERENCE:

n/a

### ANALYSIS:

The amendments to Subchapter 3 provide for filing procedures for open record requests, and to establish criteria to determine if a request is sufficiently defined to be processed, if a search fee may be required, if a request can be processed, and if the request is denied, what the appeal procedures are. Fees relating to the actual reproduction cost to the agency for specific items are established. Amendments to Subchapter 7 provide for criteria the Department may consider in its determination to waive or reduce any administrative penalty proposed to be assessed against a small business entity.

### CONTACT PERSON:

Charles Broadway, Office of General Counsel, Oklahoma State Department of Health, (405) 271-6017

## 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 MAY 27, 2003:

## SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES

### 310:2-3-5. ~~Obtaining copies~~ Access to agency records pursuant to the Open Records Act

(a) **Official records.** Official records include records required to be maintained by law, the record in individual proceedings, records submitted to the agency by any person and ~~inspection records (see Oklahoma Open Records Act)~~ any other "record" as that term is defined by the Oklahoma Open Records Act, 51 O.S. § 24A.1, *et seq.* (OORA).

(b) **Copies.** ~~Copies of official records of the Board or Department, not privileged or protected from publication by law, shall be available to the public and may be made and certified by the Commissioner on special request. Any person may request copies during office hours by offering to pay the copying expense described in the fee schedule of the Commissioner of Health.~~ Access to official records. Every record defined by subparagraph (a) above wherein disclosure is not otherwise specifically excepted by law or the OORA is subject to inspection and mechanical reproduction under the provisions set forth below.

(c) **Initial procedural requirements.** A request for inspection may be submitted orally or in writing. To encourage fully articulated and accurate response to a request, OSDH recommends a request be submitted in a form that is susceptible to memorialization such as a writing, electronic mail or facsimile transmission, and must reasonably describe the records sought. Additionally, if applicable, every request must specify a time period for which records are being sought. A request submitted in the manner above, reasonably describing the records sought and stating an appropriate time period for the records being sought will be timely acknowledged and further processed for a review and inspection. If, consistent with the OORA, agency personnel determine that a search is necessary to gather and collect the records sought by the requester, the requester is required to pay, in advance, a search fee pursuant to subparagraph (h) below.

(d) **Requests received.** Requests submitted to the agency will not be deemed to have been received unless and until the request has been identified by agency personnel as a request properly filed in accordance with these rules. After a determination is made estimating the search time necessary to gather the records requested, the agency will remit an advice of the cost to the requester. Upon receipt of the requested search fee, the request will be deemed to have been received by the agency and will then be timely processed for inspection.

(e) **Abandonment.** Any request not confirmed by a tender of the requisite search fee within thirty (30) days of advice by the agency shall be deemed to be abandoned, unless, within the time stated, the requester can show cause why the confirmation should be delayed or postponed.

(f) **Cooperation with the agency.** If the requester fails to furnish additional information reasonably necessary to identify the records sought or otherwise enable agency personnel to accurately process the request, the processing of the subject request may be suspended by agency personnel. A request that remains suspended for a period exceeding sixty (60) days shall be deemed abandoned.

(g) **Appeal.** If the agency cannot comply with the request for disclosure, the requester shall be notified in writing of the adverse determination, stating the reason(s) therefor and advising the requestor of the right to an administrative appeal under the provisions of subparagraph 310:2-3-7. (h) **Fees.** The following are fees for reproduction of records:

- (1) **Paper Records**
  - (A) Regular Copy - \$0.25 per page
  - (B) Certified Copy - \$1.00 per page
  - (C) Copy Sent by Fax - \$0.35 per page
  - (D) Copy of Pages Larger than 8-1/2 X 14 - \$0.50 per page
- (2) **Audio Tapes**
  - (A) With Tape Provided - \$5.00 per tape
  - (B) Without Tape Provided - \$10.00 per tape
- (3) **Electronic Records - Requester is required to furnish blank tape(s) if reproduction is not in a printout format, and reimburse the agency for the actual cost of the use of the central processing unit of any computer used to access data stored therein**
  - (A) \$50.00 per hour programming time
  - (B) \$50.00 per hour for other computer time
- (4) **Search Fees - \$25.00 per hour**

**SUBCHAPTER 7. ADDITIONAL PROCEDURES FOR ADMINISTRATIVE PENALTY PROCEEDINGS**

**PART 1. ENVIRONMENTAL HEALTH PENALTIES**

**310:2-7-3. Determining penalty**

(a) **In general.** The following factors may be considered in determining the amount of penalty specified in an Administrative Compliance Order:

- (1) the value of efforts to comply with the regulations cited in the notice of violation;
- (2) the economic benefit to the violator of noncompliance with the regulations in question; and
- (3) an additional amount for deterrence purposes, based upon
  - (aA) the likelihood of the development of adverse health effects caused by the violation,
  - (bB) the severity of environmental degradation or public health effects caused or placed at risk by the violation,
  - (cC) the degree of variance from the applicable standards,
  - (dD) costs of correction of damage, and

(eE) bad faith of the Respondent.

(b) **Small businesses.** If the violator is a "small business" as defined in 75 O.S. § 502, or is a for-profit enterprise consisting of fifty or fewer full-time or part-time employees, the following additional factors may be considered in determining the amount of penalty specified in an Administrative Compliance Order, and whether the penalty should be reduced or waived altogether:

- (1) the small business corrects the violation within thirty (30) days or less after receipt of a notice of violation or citation; or
- (2) the violation was the result of an excusable misunderstanding of the Department's interpretation of a rule.

[OAR Docket #03-630; filed 4-11-03]

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 285. LODGING ESTABLISHMENT REGULATIONS ESTABLISHMENTS**

[OAR Docket #03-631]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Facility Maintenance  
310:285-3-14. [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. 2001, Section 1-1201

**DATES:**

**Comment Period:**

May 15, 2002, through June 6, 2002

**Public Hearing:**

June 6, 2002

**Adoption:**

June 6, 2002

**Submitted to Governor:**

June 14, 2002

**Submitted to House:**

June 14, 2002

**Submitted to Senate:**

June 14, 2002

**Gubernatorial approval:**

July 25, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 3. Facility Maintenance  
310:285-3-14. [AMENDED]

**Gubernatorial approval:**

July 26, 2002

**Register publication:**

19 Ok Reg 2916

**Docket number:**

02-1282

**INCORPORATION BY REFERENCE:**

n/a

# Permanent Final Adoptions

## ANALYSIS:

The proposal amends Subchapter 3 of the present Lodging Establishment Regulations in order to clarify limitations of food service at a lodging facility. The intent is to maintain public protection from foodborne infection by allowing limited food service in lodging facilities. The changes involve clarification of language and modification to regulations, which were impractical or unenforceable. The substantive is: if food service is provided at a lodging establishment it shall be limited to non-potentially hazardous food and commercially packaged potentially hazardous foods. Equipment is limited to a two-compartment sink and hand sink. Any other type of food service in a lodging establishment shall meet the requirements of Chapter 256 of the Food Service Establishment Regulations.

## CONTACT PERSON:

Rocky McElvany, Environmental Health Service, Protective Health Services, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-9444, ext. 57901; facsimile: (405) 271-5254 electronic mail: rockym@health.state.ok.us

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2003:**

## SUBCHAPTER 3. FACILITY MAINTENANCE

### 310:285-3-14. Food service

~~Any food service shall comply with the standards and rules and regulations adopted by the Oklahoma State Board of Health.~~

(a) Food service, if provided, shall be limited under a lodging license. The products shall be limited to the following:

- (1) Coffee;
- (2) Tea;
- (3) Fruit juices;
- (4) Carbonated beverages. Beverage dispensers may be used if the source of ice for the dispenser is automatic dispensing;
- (5) Fresh uncut fruits, fruits that are processed in a regulated facility;
- (6) Baked goods;
- (7) Cereals;
- (8) Jams, jellies, syrups;
- (9) Pasteurized Grade A milk;
- (10) Pasteurized Grade A creams and butters, non-dairy creamers, margarines, or products of similar nature;
- (11) Commercially produced hard cheeses, commercially processed cream cheese, commercially processed yogurt;
- (12) Except for (9), Potentially hazardous foods commercially packaged in individual servings;

(b) Equipment required to conduct food service under a lodging license shall consist of at least the following:

- (1) 2 compartment sink or domestic dish machine (not located in living or tenant quarters) dedicated solely to the cleaning of utensils and equipment used in the food service operation, if the facility uses multi-use utensils in the operation. Multi-use tableware shall not be used;

(2) Handwash sink separate from the 2 compartment sink (a restroom sink located conveniently to the food service operation can be used to meet this requirement);

(3) A refrigerator that is capable of holding 41 degrees Fahrenheit;

(4) Sneeze guards and covers for self-service foods that are not protected;

(c) Milk, milk products, and juices removed from the original container for dispensing or consumption must be discarded after the food service has ended.

(d) Lodging establishments providing any other type of food service in lodging facilities must obtain a food service license from the department and shall comply with the requirements of Oklahoma Administrative Code Chapter 310:256, Food Establishments.

[OAR Docket #03-631; filed 4-11-03]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 605. ADULT DAY CARE CENTERS

[OAR Docket #03-632]

## RULEMAKING ACTION:

PERMANENT final adoption

## RULES:

- Subchapter 1. General Provisions
- 310:605-1-2. [AMENDED]
- Subchapter 7. Organization and Administration
- 310:605-7-2. [AMENDED]
- 310:605-7-4. [AMENDED]
- 310:605-7-5. [AMENDED]
- Subchapter 9. Admissions and Discharges
- 310:605-9-1. [AMENDED]
- 310:605-9-2. [AMENDED]
- Subchapter 11. Staffing Requirements
- 310:605-11-1. [AMENDED]
- 310:605-11-2. [AMENDED]
- 310:605-11-3. [AMENDED]
- 310:605-11-4. [AMENDED]
- 310:605-11-5. [AMENDED]
- Subchapter 13. Services
- 310:605-13-1. [AMENDED]
- 310:605-13-2. [AMENDED]
- 310:605-13-3. [AMENDED]
- Subchapter 15. Physical Facility
- 310:605-15-1. [AMENDED]
- 310:605-15-2. [AMENDED]
- 310:605-15-3. [AMENDED]
- 310:605-15-5. [AMENDED]
- 310:605-15-6. [AMENDED]
- 310:605-15-7. [AMENDED]
- 310:605-15-8. [AMENDED]

## AUTHORITY:

Oklahoma State Board of Health: 63 O.S. Section 1-104 et seq.; and Title 63 O.S. Section 1-870 et seq.

## DATES:

### Comment Period:

August 15, 2002 through September 19, 2002

### Public Hearing:

September 19, 2002

### Adoption:

September 19, 2002

### Submitted to Governor:

September 27, 2002

**Submitted to House:**

September 27, 2002

**Submitted to Senate:**

September 27, 2002

**Gubernatorial approval:**

October 29, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

The proposed amendments were initiated by and are based on the recommendations of the Long Term Care Facility Advisory Board. Generally, the amendments of the Advisory Board strive to eliminate vague or repetitive requirements as well as clarify and strengthen others.

The amendments update definitions and references in order to be consistent with current laws. The proposal modifies several requirements for facility organization and the policies and procedures that must be developed and maintained. These modifications eliminate duplication of requirements located elsewhere in the rule. The responsibilities of the facility's governing body are modified. Requirements for facility policies regarding hours and days of operation, enrollment criteria and rates and payments are modified. Policy requirements for medical assessment, discharge planning, personnel record-keeping and general record keeping are also modified. The changes further clarify requirements relating to animals that visit or are kept as pets in centers.

The amendments modify requirements for admission and discharge. The time frame for submission of medical information at time of admission, the information required at admission and discharge requirements are modified. The requirements for the participant's plan of care are changed.

This proposal modifies the staffing requirements for facilities. The proposal adds specific language requiring assistance in Activities of Daily Living must be provided by those qualified by licensure or certification. Additionally, language is added requiring Certified Nurses Aides to have a criminal background check. The defined responsibilities for required staff as well as the record-keeping requirements for type of work performed are modified. The use of major fraction in calculating staffing ratios is added. The redundant requirement for sufficient staffing relative to participant impairment is removed because it is addressed in the requirement that sufficient numbers of direct care staff be on duty at all times to meet the needs of each participant.

The title for certain staff positions is changed as well as the qualifications required. Removes the classification of custodian and any qualifications. Inservice training requirements are modified as well as what shall be included in the employee personnel record.

The proposal amends vague requirements for required and specialized services as well as what must be maintained in the participant record.

This proposal includes modification to requirements for the physical facility. This includes changes to the general criteria for the physical facility, the requirements related to the American's With Disabilities Act and building space. Modifications are proposed to regulations for furnishings, sanitation, and housekeeping and fire service response.

**CONTACT PERSON:**

James Joslin, Director, Long Term Care Survey Division, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6868; electronic mail: james@health.state.ok.us

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2003:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**310:605-1-2. Definitions**

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

**"Adult Day Care Aide"** means an individual who has met the state qualifications for certification and who assists the professional staff members in the implementation of the programs and services of the center, and has completed an orientation program provided by the center.

**"Adult Day Care Center"** or **"center"** means a facility which provides basic day care services to unrelated impaired adults for more than four (4) hours in a twenty-four-hour period. A center shall be a distinct entity, either freestanding or a separate program of a larger organization. A center shall have a separately verifiable staff, space, budget and participant record system. The terms "adult day care center" or "center" shall not include retirement centers and senior citizen centers [63:1-872].

**"Adult Day Care Provider"** means the person, corporation (for profit or not for profit), partnership, association, or organization legally responsible for the overall operation of the adult day care center, who has a current license.

**"Associated day care program"** is an adult day care center which is physically attached with another organization established primarily to offer other services (such as medical care or long term care) but has distinctly designated space and staff for an adult day care program which is in addition to the existing space and staffing requirements for the residents, patients, or clients.

**"Basic Day Care Services"** means supervised health, social supportive, and recreational services in a structured daytime program which serves functionally impaired adults who cannot take care of themselves who continues to live in their own homes, usually with the aid of family caregivers.

**"Caregiver"** means a person who is responsible for the care of the participant in the home.

**"Case Manager"** means an individual who is responsible for providing and/or coordinating individual and group counseling to participants and family or caregiver, and who assists the participant in obtaining needed resources within the community.

**"Department"** means the State Department of Health.

**"Dietary or Food Service Supervisor"** means an individual qualified by training or experience who is responsible for food service in the center.

**"Direct Care Staff"** means those staff (paid and volunteer) assigned to take care of the direct needs of participant.

**"Free-Standing Adult Day Care Center"** means a center which does not share staffing or licensed space or any physical components of space, equipment, furnishings, dietary, security, maintenance or utilities used in the provision of services with any other organization, or service.

**"Functionally impaired adult"** means an individual aged eighteen years or older who requires care and/or supervision.

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~~"Geriatric Aide" means an individual who assists the professional staff members in implementing and performing the program and services of the center, and has completed orientation program provided by the center.~~

"Medication Aide" means an individual who has received certification to administer medications from a program approved by the Department.

"Nurse" means a licensed practical nurse or registered nurse currently licensed in the State of Oklahoma.

"Participant" means a person who attends an adult day care center.

"Participant's Guardian" means a court appointed guardian.

"Participant's Representative" means an individual designated in writing by the participant to act as responsible party to act in his/her stead.

"Qualified Dietitian" means an individual who is registered as a dietitian by the American Dietetic Association, or has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management, has one year of supervisory experience in the dietetic service of a health care institution, and participates annually in continuing dietetic education.

## SUBCHAPTER 7. ORGANIZATION AND ADMINISTRATION

### 310:605-7-2. Responsibilities

The governing body of an adult day care shall:

- ~~(1) Formulate and annually review written policies concerning the center's goals, current services, personnel practices, and fiscal management.~~
- ~~(2) Ensure continual compliance and conformity with all relevant local, state, and federal laws and regulations.~~
- ~~(3) Designate a center director who manages the center.~~

### 310:605-7-4. Development of written policies and procedures

Written policies and procedures shall be developed by the center which include the following:

- (1) **Enrollment criteria.**
  - (A) Each center shall have enrollment policies. ~~The written enrollment policies shall define who can be served.~~
  - (B) The written enrollment policies shall contain specific admission criteria to define the participants who can be served by the center serve as a basis for determining who shall be accepted into the program and for planning appropriate activities for the participants. Policies shall be specific guarding against enrolling persons whose needs realistically cannot be met by the planned program.
  - (C) The center's admission criteria enrollment policies shall not include prohibit enrollment of persons

whose needs exceed the capability of the center's program, ~~or and~~ persons excluded by the Adult Day Care Center Act.

(2) **Hours and days of operation.** The center shall establish polices and procedures covering the hours and days of operation ~~which meet the needs of participants and caregivers served. The policy shall also include exceptions to normal operation, i.e., holidays, vacations, and hazardous weather conditions and other emergencies.~~

(3) **Rates and payments.** The center shall establish policies and procedures governing rates and payments which include the following:

- (A) Charges for basic services.
- (B) Services that may be obtained on a fee basis, but are not included in the basic services.
- (C) Public disclosure of the above.

(4) **Types of services provided.** The center shall have written policies and procedures which contain the range of services provided by the center, including specialized services, i.e., speech therapy, physical therapy, counseling, transportation, etc., and other services that may be arranged through the center with other resources within the community.

(5) **Medication storage and administration.** The center shall have written policies and procedures governing the storage, maintenance, and administration of medications as stated in section 310:605-13-2(2).

(6) **Admission and discharge.**

(A) **Admission.** The center's policies and procedures for admission and discharge of participants shall include, but not be limited to the following:

- (i) An application for enrollment to be completed prior to or upon admission to the center.
- (ii) The requirement for a current medical report and medical assessment by the participant's physician to be obtained within 5 working days of admission.
- (iii) ~~The components of the participant's plan of care to be initiated upon admission to the center.~~

(B) **Discharges.** The written policies and procedures regarding discharge from the center shall include but not be limited to the following:

- (i) Provision for emergency discharge of participant to other health care facilities or to caregiver when the health or safety of the participant or other participants is endangered.
- (ii) Notice requirements and causes for involuntary termination of services to a participant.
- (iii) Discharge planning ~~which includes after care, plans of supports, and resources available to the participant within the community, when applicable in accordance with all requirements at 310:605-9-2.~~
- (iv) ~~The components of the discharge summary to be completed when a participant goes to another center or other health care facility.~~

(7) **Personnel policies and practices.** The center shall have written policies and procedures which include, but are not limited to, the following:

- (A) Recruitment, hiring, orientation, training of all personnel serving the facility, including volunteers.
- (B) Written job description for each position.
- (C) Compliance with equal opportunity employment guidelines and federal and state employment regulations pertaining to personnel practices.

(8) **Personnel records system.** A personnel record shall be established for each employee and each volunteer counted in the staffing ratio.

(9) **General record system.** Each center shall establish a general record system, which includes, but is not limited to, the following:

- (A) A registry of all participants recording dates of admission and discharge.
- (B) Maintenance and storage of records.
- (C) Records of employee and volunteer orientation and training.
- (D) Center's policy and procedure manual.
- (E) Inspection reports from state and local authorities having jurisdiction regarding licensing and certification of the center.

(A) Records of any incident or accident involving a participant shall be kept and maintained.

(B) Participant records for social services and medical information shall be maintained.

(C) All records may be kept and maintained electronically in a computer system and in a central storage location, accessible on site. A backup of the computer system shall be maintained.

(D) The employee and participant records shall be retained for not less than five years after the participant's discharge or employee's termination.

(10) **Emergency services.**

- (A) Each center shall have written policies for handling emergencies involving participants or staff.
- (B) The policies and procedures shall provide instruction on obtaining outside emergency services.
- (C) The policies and procedures shall be designed to insure that the family member, caregiver, or responsible party designated in the participant's record is notified when an emergency occurs.

**310:605-7-5. Residential and visiting pets**

(a) Each center that allows permits residential or visiting animals pets shall adopt and comply with policies that meet or exceed the requirements in 310:605-7-5(a) and (b) have written policies and procedures regarding those pets. The center's policies shall describe the schedule of animal care and zoonotic infection control for the respective center. The center shall not allow any animal pet to reside in the center until unless all of the following requirements are met:

(1) The animal is a dog, cat, fish, bird, rabbit, or guinea pig. If a center desires to include other types of animals in

their program, the center shall submit a supplemental request accompanied by its policies, procedures, and guidelines to the Department and receive written approval from the Department prior to implementation.

(2) For residential pets, excluding fish, the number of animals in a center shall be limited to no more than one dog per 50 participants; 1 cat, rabbit, or guinea pig per 30 participants; or 1 bird per 20 participants, unless the center has received the Department's prior approval of a greater number of pets through a supplemental request pursuant to 310:675-7-19(a)(1).

(3) The center adopts policies ensuring non-disruption of the center.

(4) All pets are housed and controlled in a manner that ensures that neither the pet nor the participants are in danger. A pet cage or container must not obstruct an exit or encroach on the required corridor width.

(5) The following veterinary medical services are obtained for each pet, when applicable to species, and a record of service is maintained on file at the center:

(A) A health certificate from a veterinarian licensed to practice in Oklahoma stating the animal is healthy on physical exam and of acceptable temperament to be placed in the center;

(B) Proof of evaluation by a veterinarian licensed to practice in Oklahoma for presence of internal parasites on a semi-annual basis and for the presence of external parasites as needed;

(C) Proof of current rabies immunization for dogs and cats, and leptospirosis immunization for dogs administered by a licensed veterinarian;

(D) Proof of spaying/neutering for dogs and cats over six months of age; and

(E) Statement from a licensed veterinarian certifying that each bird tested negative for *Chlamydia psittacae* infection (psittacosis) within 30 days prior to placement in the center. Birds equal in size to or larger than a parakeet shall receive a serologic test. Culture from fresh droppings or cloacal swab will be acceptable test in smaller birds, such as canaries and finches.

(6) The pet's skin appears normal, and its coat or feathers are free of ectoparasites, matted hair, feces, and other debris.

(7) Residential pets shall be the responsibility of the administrator, who shall designate at least one attendant to supervise the care and maintenance of resident animals. The administrator and the designated attendants shall at least annually review the center's policy on residential and visiting pets, and shall document that they have read and understood the policy.

(8) The center provides for the cleaning and disinfecting of any areas contaminated by urine or excrement, and for the regular cleaning of aviaries, aquariums, and animal cages. Water in aquariums and fish bowls shall be appropriately maintained to prevent bacterial growth in the water.

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- (9) ~~Residential dogs and cats shall not be allowed to remain in the participant areas after visiting hours. No animal shall be allowed in an area used for food storage or preparation, dining, medication preparation or administration, or clean or sterile supply storage.~~
- (b) ~~The center may allow other animals to visit the center. Visiting animals shall be under the control of the person bringing the pet into the center. The attendant of visiting animals shall adhere to the center's policies and procedures for residential pets. Proof of current rabies immunization must be provided to the administrator before any dog, cat or ferret can be allowed as a visiting pet in the center.~~
- (e) ~~The Department shall publish and distribute to centers recommended husbandry and veterinary care guidelines for residential pets. The guidelines shall include but not be limited to recommendations for housing, cleaning needs, exercise, diet, fecal examinations, grooming, attendant training on animal care and nutrition, and preventive health care. The guidelines shall be used for the information and education of centers.~~
- (d) ~~Section 310:605-7-5 does not supersede any local or state rules that regulate animals.~~
- (1) The pet is a dog, cat, fish, or bird. A center may establish a program which includes animals other than dogs, cats, fish, or birds if the center submits its policies, procedures, and program guidelines to the Department and receives written approval from the Department prior to implementation of the program.
- (2) The center has no more than two (2) dogs or cats as residential pets unless the center has received prior approval from the Department as a stated special program pursuant to 310:605-7-5-(a) (1).
- (3) The center's policy ensures non-disruption of the center.
- (4) For each pet, the center has or provides the following:
- (A) Proof of current rabies immunization and leptospirosis immunizations for dogs and cats administered by a veterinarian licensed to practice in Oklahoma;
- (B) A statement from a veterinarian licensed to practice in Oklahoma certifying the pet is free from disease communicable to humans;
- (C) Proof of evaluation by a veterinarian licensed in Oklahoma for presence of internal parasites on a semi-annual basis and for the presence of external parasites as needed; and,
- (D) A statement from a veterinarian licensed in Oklahoma certifying that each bird has been proven free of psittacosis.
- (5) The pet's skin appears normal, and its coat is free of ectoparasites, matted hair, feces, and other debris.
- (6) The center adopts a policy for control of pets to ensure that neither the pet nor the participants are in danger. If necessary, a pet shall be on a leash or harness, muzzled, caged, or in a container. A pet cage or container must not obstruct an exit or encroach on the required corridor width.
- (7) Residential pets shall be the responsibility of the director's designated attendant.

(8) The center provides for the cleaning and disinfection of any area(s) contaminated by urination or excrement, and the center provides for the cleansing of aviaries, aquariums and fish bowls. The aquariums and fish bowls shall be monitored to prevent bacterial growth in the water.

(9) Residential dogs and cats shall not be allowed in the participants' areas after the hours of operation. Pets shall not be allowed in the kitchen, dining room or in areas used for food storage or preparation, dining, medication preparation or administration, or clean supply storage.

(10) The center shall arrange for care of the pet during periods outside of the center's normal operational hours, such as evenings, weekends, and holidays.

(A) The center may allow pets to visit the center. A visiting pet shall be under the control of the person who brought the pet into the center. The visiting pet's attendant shall adhere to the center's policies for residential pets.

(B) Section 310:605-7-5 does not supersede any local or state requirements regulating animals or pets.

## SUBCHAPTER 9. ADMISSIONS AND DISCHARGES

### 310:605-9-1. Admission

(a) ~~A signed application for participation and current medical information shall be obtained prior to or upon the applicant's first day of participation. The medical information shall be obtained from or verified by the participant's physician and shall include the following:~~

- (1) ~~Physician's name and telephone number.~~
- (2) ~~Date of last visit.~~
- (3) ~~Current illnesses or health problems.~~
- (4) ~~Current medication.~~
- (5) ~~Dietary restrictions, if any.~~

(b) ~~A current medical report and a medical assessment by the participant's physician of the participant's medical condition to include activity and restrictions, dietary modifications, indicated therapies and medications upon admission, or within shall be obtained within five (5) days of the participant's entry into the adult day care program.~~

(c) ~~Each participant shall have an individualized written plan of care developed within ten (10) days following participants-participant's entry into the adult day care program. The plan shall be based on a functional assessment and information obtained from the participant and/or family member, physician, and the person or agency referring the participant. The plan of care shall address the participant's physical, social, and psychological needs, goals and specific methods of goal accomplishment, considering the program design and if staff is qualified to meet these goals. The plan of care shall be reviewed at least every six (6) months and updated as warranted by changes in the participant's condition.~~

(d) ~~If a participant is not under a physician's care nor is taking any medications, the center may substitute a nursing assessment by a registered nurse for the medical assessment~~

required in subsection (b) of this Section. In this case, the center may also verify the medical information with family or friends of the participant. If the nursing assessment reveals medical problems, the participant shall not be admitted to the center without the medical assessment.

**310:605-9-2. Discharge**

- (a) ~~Each A~~ participant, his or her family member, guardian, and/or representative shall be given a minimum of two weeks notice of the center's intent to terminate services to the participant unless continued attendance would infringe on the safety or well being of other participants or staff.
- (b) There shall be a detailed report of circumstances leading to each unplanned discharge.
- (c) Prior to a planned discharge of a participant, the staff shall develop an aftercare plan of supports and resources provided to the participant.
- (d) A discharge summary to accompany a participant going to another center of health care shall include the needs of the participant, his/her medication history, social needs, and other data that will assist in his/her care at the new location.

**SUBCHAPTER 11. STAFFING REQUIREMENTS**

**310:605-11-1. Staffing requirements**

Each adult day care center shall have a staff adequate in number, and appropriately qualified and trained to provide the essential services of the center.

- (1) Each adult day care center shall have ~~as a minimum~~ the following staff~~the following positions:~~
  - (A) A director who shall have the authority and responsibility for managing and implementing the day care program.
  - (B) An activity director ~~whose responsibility shall be to develop and implement an activities program to meet the individual needs of the participants.~~
  - (C) A ~~social worker~~ services coordinator or case manager who shall be responsible for providing and coordinating individual or group counseling, and to provide participants or caregivers information and assistance on obtaining available community resources to meet the needs of the participants. ~~The center may contract the service with an outside source.~~
  - (D) A dietary supervisor ~~who shall be responsible for planning, implementing, and managing the food service system selected by the center.~~ Centers that are a part of larger organization which provides food service to the center, or centers that contract with an outside service for food service may employ a part time dietary supervisor.
- (2) Each center shall ~~have~~ employ additional staff, such as nurses, therapists, consultants, drivers, etc., ~~based on the program plan for the center and the needs of the participants as determined by the participants' plans of care as needed.~~

- (3) Staff who serve in more than one staff position shall meet the minimum qualifications for each position served ~~and shall schedule and document time served in each position.~~
- (4) Centers that administer medication shall have a registered nurse (R.N.), licensed practical nurse (L.P.N.), certified medication aide (CMA), or a medication administration technician (MAT)~~aide~~ who has successfully completed a course of training in administration of medications approved by the Department. Monthly consultation by an R.N. or L.P.N. shall be required for centers where medications are administered by a certified medication aide (CMA), or a medication administration technician~~aide.~~
- (5) Staff who have direct contact with participants shall be free of communicable disease ~~and physically and emotionally able to work in an adult day care program.~~
- (6) Each center shall be in compliance with the criminal arrest check, training, examination, application, registration and certification requirements in 63 O.S. Section 1-1950.1, 1-1950.3, 1-1950.4, and 1-1951.
- (67) Each paid day care center staff person (professional or non-professional) shall arrange for an employment examination within 72 hours of employment which shall include but not be limited to a tuberculin skin test. (The Mantoux test is recommended by the Oklahoma State Department of Health). A tuberculin skin test shall be repeated annually unless the individual has already had a positive reaction to a previous skin test.

**310:605-11-2. Staff ratios**

- (a) There shall be provided a sufficient number of direct care staff on duty at all times to meet the needs of each participant. There shall be a minimum of one full time equivalent direct care staff person for every eight (8) participants ~~that who~~ are present and one (1) additional direct care staff person for ~~any a~~ major portion of eight (8) additional participants present.
- (b) ~~As the number and severity of participants with functional impairments increase, the staff participant ratio shall be adjusted accordingly.~~
- (c) ~~The direct care staffing ratio shall be based on full time equivalents.~~
- (d) There shall be at least two (2) responsible persons at the center when participants are present; one shall be a staff member.

**310:605-11-3. Staff qualifications**

- (a) **Director.** The Director shall have at a minimum a Bachelor's degree ~~in health or social services related field, with and~~ one year supervisory experience in a social or health services setting, or a minimum of a high school diploma plus ~~two~~ five consecutive years supervisory work experience (full-time or equivalent) in a long term care or geriatric setting.
- (b) **Social Worker Services Coordinator or Case Manager.** The ~~social worker~~ services coordinator or case manager shall have a minimum of a bachelor's degree ~~in social work or behavioral sciences or related academic area, or a minimum~~

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of a high school diploma plus five consecutive years of work experience in a long term care or geriatric setting.

(c) **Nurse.** A nurse shall be a registered or a licensed vocation/practical nurse who is currently licensed by the State of Oklahoma and has experience working with the aging and chronically impaired adult.

(d) **Activities Director.** The activities director shall be qualified by training or experience in recreation or related area.

(e) **Dietary Supervisor.** A food service supervisor shall be qualified by training or experience.

(f) **Geriatric Adult day Care Aide.** ~~The geriatric aide shall have training or experience working with adults in a health care or social service setting. Duties shall include assisting other staff members in implementing and performing services and activities and other duties as needed. An Adult Day Care Aide who provides direct personal care services shall be Certified at least to the Adult Day Care level of nursing aide training.~~

(1) Each certified adult day care aide employed by the Center shall be in compliance with the criminal arrest check, training, examination, application, registration and certification requirements in 63 O.S. Section 1-1950.1, 1-1950.3, 1-1950.4, and 1-1951.

(2) The Center shall contact the Department's nurse aide registry prior to employing a nurse aide to determine whether the person is listed on the registry, and if there is a confirmed finding of abuse, neglect, or misappropriation of property.

(3) The Center shall ensure that the certification for each nurse aide is current.

(g) **Therapist.** ~~Physical therapist, occupational therapist, recreational therapist, and speech therapist who provide services to the Center and/or its participants shall have valid state credentials. Staff may work independently under directions of the licensed therapist.~~

(h) **Consultant.** The individual consultant shall be available to provide services to the participant as prescribed by the physician in order to supplement professional staff. Consulting services may be done on an individual basis or by contract or written agreement with a community group source or individual.

(i) **Volunteers.** Volunteer staff who are counted in the staffing ratio shall be qualified by training and/or experience to perform duties and responsibilities required by the written job description.

(j) **Direct care.** Direct care paid staff shall be at least eighteen (18) years of age and qualified for the position held ~~by training and/or experience.~~

(k) **Driver.** ~~Driver~~ Each driver shall have a valid and current state driver's license appropriate for the position, a safe driving record, and training in first aid and CPR.

(l) **Custodian.** ~~The custodian shall be knowledgeable in maintaining a service facility.~~

### 310:605-11-4. Orientation and training

(a) All staff, prior to performing job responsibilities, including non-direct care, direct care, and volunteers, shall be given a general orientation to the program, its policies, fire, safety, and emergency procedures.

(b) ~~In-service training appropriate to each staff person's job function and participant care needs for each staff person shall be provided at least quarterly.~~

(c) Each staff member shall be competent, ethical, shall hold personal information regarding participants in confidence, and treat all participants with respect and dignity.

(d) Documentation of attendance and content for all orientation and training shall be maintained by the center.

### 310:605-11-5. Personnel records

Individual personnel records for both paid staff and volunteer staff counted in the staffing ratio shall include:

- (1) A valid form of photo identification;
- ~~(2)~~ Position title;
- ~~(3)~~ Job description;
- ~~(4)~~ Copies of license(s) or certification(s) of professional qualification(s) applicable to the position;
- ~~(5)~~ Education background;
- ~~(6)~~ Employment history and references;
- ~~(7)~~ Work performance evaluation;
- ~~(8)~~ Orientation and in-service documentation;
- ~~(9)~~ Previous year's work record;
- ~~(10)~~ Documentation of any communicable disease and physician's written release to return to work;
- ~~(11)~~ Current documentation of training in first aid and CPR if applicable.
- (7) Results of criminal background check, if applicable.

## SUBCHAPTER 13. SERVICES

### 310:605-13-1. Required services

Each adult day care center shall provide supervision of participants, assistance with activities of daily living, planned activities, social services, nutritious meals, and emergency and first aid services.

(1) **Supervision of participants.** Supervision and monitoring of participants shall include, but not be limited to, the following:

- (A) Knowledge of participant's whereabouts while attending the program.
- (B) Assistance as needed in interaction with other participants and staff.
- (C) Observing functional status to determine if a change in the participant's plan of care is needed.

(2) **Activities of daily living.** Provisions shall be made for assistance and training in walking, feeding, toileting, personal care, and other activities of daily living according to each participant's plan of care. Assistance shall be provided by those qualified by licensure or certification.

(3) **Planned activities.**

- (A) The adult day care center shall provide planned activities during at least one-half (1/2) of daily operations, with a minimum of four (4) hours of planned activities.

(B) ~~Socialization~~—activities Activities shall be planned to meet the needs, ~~and~~ interests and abilities of participants.

~~(C) All activities shall be designed to stimulate interest, motivate and encourage physical exercise in accordance to participant's plan of care.~~

~~(D) Participants shall be encouraged but may refuse to participate in any given activity.~~

~~(E) All activities shall be adequately supervised by program staff.~~

~~(F) The facility shall provide adequate space and sufficient equipment and materials to support planned independent and group activities.~~

~~(G) A monthly schedule of activities shall be planned and implemented which allows both variety and flexibility. The schedule shall be displayed prior to the first day of the month.~~

~~(H) Daily activities shall be posted in a visible location.~~

~~(I) Outings shall be planned and implemented as often as possible in order to stimulate the potential of community involvement by each participant.~~

~~(J) Staff shall be encouraged to explore and utilize other community resources which may be available by the community.~~

(4) **Social services.**

(A) ~~The center shall make available~~ may, upon request by a participant or his or her legal guardian, recommend to participant participants and their family available counseling services, if needed and desired, either within the center or by arrangement with resources in the community. ~~Counseling shall be on an individual or group basis.~~

(B) ~~The~~ Social services shall be directed toward the following:

(i) Maintaining the maximum social functions of the participant.

(ii) Assisting with personal, family, and adjustment problems.

(iii) Safeguarding and fostering the human and civil rights, ~~fostering~~ the human dignity and personal worth of each participant.

~~(C) A plan shall be developed for the participant's preservation and restoration, accurate records maintained and evaluated, as needed, in conjunction with the total plan of care.~~

(5) **Nutrition and food service.**

(A) The adult day care center shall provide or make arrangements for a minimum of one meal daily which is of suitable quality and quantity for participants who are in the center for four (4) or more hours. The meal shall meet at least one-third (1/3) of an adult's current recommended dietary allowance (RDA) of the Food and Nutrition Board, National Academy of Sciences-National Research Council.

(B) Food shall be stored, prepared, and served in accordance with the Rules and Regulations for Food

Service Establishments adopted by the State Board of Health.

(C) Food that is not prepared on site shall be prepared in a facility which meets the local and state health regulations.

(D) Poisons and other dangerous materials shall be stored in a non-food preparation and/or storage area.

(E) Potable water shall be available to all participants as needed.

(F) Menus shall be planned and written for a minimum of a two-week cycle, if meals are prepared on site.

(G) The menu shall be dated for the week of service and posted in a prominent area for the availability to the participant, family, or participant's designated representative.

~~(H) A therapeutic diet shall be provided for a participant when prescribed in writing by a physician. Therapeutic diets shall be prepared by one who has training in planning and preparing therapeutic diets or shall have sufficient experience to assure ability to prepare meals in accordance with physician's prescription.~~

(I) A qualified dietitian/nutritionist shall be provided for consultation with staff on basic and special nutritional needs and proper food handling techniques.

(J) Appropriate food containers and utensils shall be available as needed for use by handicapped participants.

(K) Dining areas shall be sufficiently equipped with tables and chairs to meet the needs of each participant including participants using wheelchairs.

(L) Garbage shall be stored, bagged, and disposed of in accordance to local and state health regulations.

(6) **Emergencies and first aid.**

(A) Written detailed plans for handling emergencies shall be established and shall be ~~conspicuously~~ displayed in a conspicuous place within the facility. ~~The information shall include the name and telephone number of persons to be called.~~

(B) The plan shall relate to non-medical and medical emergencies and the responsibilities of each staff position shall be specified.

(C) All staff shall be knowledgeable about the plan.

(D) Each participant shall provide an emergency information sheet, medical history, and a signed liability release form for use in an emergency.

(E) The name and telephone number of participant's family member, caregiver, or responsible party shall be on file and ~~immediately~~ retrievable by the staff.

(F) Emergency phone numbers shall be conspicuously posted to include ambulance, hospital, fire, and police when 911 is not available.

(G) There shall be at least one ~~direct care~~ staff person on duty at all times who is trained in CPR.

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(H) There shall be conducted regular drills for all staff in handling different kinds of emergencies and documented as to date, kind of emergency, and individual receiving training. Emergency drills shall be conducted at least once every three months.

(I) Any sickness, or accidents involving a participant, resulting in physical injury or suspected physical injury to the participant shall be reported to the director who shall arrange for appropriate action.

(J) Any participant who shows symptoms of illness or infectious disease shall be given the necessary attention and/or removed from the group.

(K) The provider shall have available a room for participants who require removal from the group due to temporary illness.

(v) The phone orders shall be signed and dated by the physician within three (3) working days after giving the phone order. Orders by facsimile are acceptable as original signatures.

(vi) Phone orders shall be written into the participant's record and date noted by the licensed nurse who received them.

(vii) Orders regarding medications and treatments shall be in effect as indicated by the physician for a specified number of days.

(viii) Changes in health status, including reaction to medication and/or treatments, shall be communicated immediately to the participant's physician by the licensed nurse. If the facility is unable to contact the participant's personal physician, emergency medical procedure shall be followed.

(ix) All medications shall be packaged and labeled in accordance with professional pharmacy standards, state and federal drug laws and regulations, and the United States Pharmacopeia (USP). Labeling shall include cautionary instructions, as well as expiration date, when applicable, and name of medication specified by the physician.

(x) Over the counter drugs for individual participants shall be labeled with at least the participant's name.

(xi) Schedule II drugs shall be kept in a locked box.

(xii) Medications requiring refrigeration shall be kept refrigerated in a locked refrigerator or in a locked box within the refrigerator or in a refrigerator within a locked room.

(xiii) The temperature range of the medication refrigerator shall be 36° F. (2° C) to 48° F. (8° C).

(xiv) No food shall be stored with refrigerated medication except for food used for medication and administration.

(xv) The administration and storage medication system shall be reviewed by a licensed nurse not less than every three (3) months.

(xvi) A written medication administration record shall be maintained for medications administered.

(xvii) Documentation of medications administered shall be done within one hour after administration of medication.

(xviii) Records of all Schedule II drugs shall be maintained.

### 310:605-13-2. Additional Services

Adult day care centers shall provide the following as indicated by the center's program goals and the individual needs of the participants served:

#### (1) Health Monitoring.

(A) The health, functional, and psychosocial status of each participant shall be observed for significant changes and documented in the participant's record at least monthly by the designated professional staff. Each family and/or physician shall be notified of such changes.

(B) The staff shall arrange for contacts with health professionals as needed by each participant.

(C) There shall be proper administration of medications as prescribed by the physician.

(D) Written policies and procedures shall be developed and implemented for participants self-medication administration and staff medication administration.

#### (2) Medications.

(A) Participants shall be encouraged to retain and administer their own medications while attending the adult day care program.

(B) When a participant has been determined to be unable to be responsible for his medication, the following procedures shall be followed:

(i) The medication shall be retained in a safe, secure, locked area for storing medications or drugs until prescribed time.

(ii) Medications maintained by the center shall be retained in containers in which they were dispensed from the pharmacy. The containers shall be labeled with the participant's full name, the name and strength of the medication, and the dosage and administration instructions.

(iii) Medications may not be administered without an order from a physician.

(iv) Physician's phone orders may be taken only by a licensed nurse.

#### (3) Specialized services.

(A) A planned and structured program of therapeutic activities shall be available to all participants in accordance to participant's plan of care.

(B) The following services which are designed to improve or maintain participant's independent functional ability may be arranged and secured through

qualified community resources: physical therapy, occupational therapy, recreational therapy, and speech therapy.

(4) **Transportation.** The following requirements must be met if transportation is provided by the adult day care center to ensure the health and safety of the participants:

(A) The number of participants allowed in a car, station wagon, van, bus, or whatever the type of transportation used shall not exceed the number for which the vehicle is designed. Each person transported must have a seat.

(B) There shall be provisions made to accommodate participants who use assistive devices for ambulation.

(C) Participants shall be offered an opportunity to have a rest stop when being transported for more than one hour.

(D) The center shall be sufficiently staffed to ensure the safety of participants being transported by facility vehicles. ~~At least one staff person in the vehicle shall be trained in first aid and CPR.~~

(E) The provider shall conform to all state laws regarding regulations, drivers, vehicles, and insurance.

(F) The center shall maintain the vehicle in good repair.

**310:605-13-3. Participant records**

All adult day care centers shall maintain an individual folder for each participant. Each record shall include but not be limited to the following:

(1) Admission information including medical and social history and identification.

(2) Physician's orders for medications, treatments, diet, rehabilitation, and special medical procedures ~~required for the safety and well being of the participant.~~

(3) Current health ~~evaluation~~ evaluations, ~~including physical examinations.~~

(4) A chart of medications administered and any reactions, if applicable.

(5) A written plan of care.

(6) Copies of initial and periodic examinations, evaluations, and progress notes ~~relating to services and consultations from health professionals.~~

(7) ~~Authorization~~ An authorization statement for emergency medical assistance including the name of a designated physician, plan for payment of charges, and insurance policy number, Medicaid or Medicare card number.

(8) Name, address, and phone number of at least two (2) family members, guardians, and/or other persons designated to be contacted in an emergency.

(9) ~~Transportation arrangements including estimated time of arrival and departure from the center.~~

(10) ~~A signed statement by participant or legally designated guardian for field trips and other activities away from the center.~~

(11) ~~Daily attendance log for the previous calendar year, if applicable.~~

~~(12) Documentation of any accidents or incidents.~~

~~(13) Discharge plan and summary, when appropriate.~~

**SUBCHAPTER 15. PHYSICAL FACILITY**

**310:605-15-1. General criteria**

The facility and grounds shall be safe, clean, and designed with consideration for the special needs and interests for the aging, disabled, and handicapped adult participants.

(1) The center shall comply, when applicable, ~~to~~ with all local and state laws and codes and ordinances as pertain ~~to~~ with this occupancy.

~~(2) The general environment shall be pleasant and comfortable within the center.~~

~~(3) A telephone shall be available to participants to make and receive calls.~~

~~(4) A cooling, heating, and ventilation system shall provide comfort and shall accommodate all participants.~~

~~(5) Room temperature shall meet reasonable comfort needs of the participant.~~ Room temperature shall be maintained between sixty-eight degrees Fahrenheit (68° F.) and eighty-five degrees Fahrenheit (85° F.).

~~(6) Lighting shall be adequate in all areas. Glare shall be kept at a minimum, carefully considering visual losses of the participants served.~~

~~(7) A method shall be provided to control excessive noises.~~

~~(8) Equipment and supplies shall be adequate to meet the needs of participants including items necessary for direct care and items to support both independent and group activities.~~

**310:605-15-2. Buildings and grounds (refer to ADA standards)**

(a) The building must meet the approval of ~~the~~ local building and fire inspectors ~~in regards to structural soundness and fire safety~~ or the state fire marshal's office.

(b) The center ~~site shall be designed or adapted to provide adequate turning space for participants using wheelchairs~~ have ramps or other means of accessibility for disabled persons, which comply with federal, state and local law applicable to persons with disabilities.

(c) The building shall be designed or adapted to meet heating, air conditioning, and water supply approved by the Department according to rules and design standards of the Board of Health.

(d) There shall be at least two (2) exits from the center which can be used as disaster escape routes. ~~Exits shall be wide enough to accommodate wheelchairs and shall be clearly marked with exit signs.~~

(e) The heating system shall comply with local and state codes. Heating pipes, radiators or hot water pipes in rooms and areas used by participants shall be covered or protected.

(f) Portable space heaters shall not be used.

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(g) ~~The center shall have ramps or other means of accessibility meeting the local and state regulations for handicapped persons.~~

(hg) Plumbing and plumbing fixtures shall conform to local and state codes. There shall be no cross-connection between the potable water supply and any pollution source through which the potable water might become contaminated.

(ih) An adequate supply of water under sufficient pressure shall be provided to properly serve the participants.

(j) ~~Sufficient toilet and handwashing facilities shall be provided to meet the needs of both males and females. At least one (1) toilet and lavatory shall be provided for each ten (10) participants. Toilets and hand washing facilities shall be equipped for each accessibility for the handicapped. The lavatory shall be within close range to each toilet and shall have hot and cold running water. Hot water shall not exceed one hundred fifteen degrees Fahrenheit (115o F.).~~

(i) At least one toilet and hand washing facility shall be provided for each 12 participants.

(j) The lavatory shall have hot and cold running water. Hot water shall not exceed one hundred fifteen degrees Fahrenheit (115 F.).

(k) A trash receptacle, soap, toilet paper, and individual paper towels shall be provided at all times and shall be within reach of the participants.

(l) The toilet room shall be within easy access to the activity areas and shall provide privacy for the participant.

(m) Each toilet room shall be equipped for approved ventilation.

(n) There shall be a separate room or partitioned area for temporarily isolating participants in case of illness.

(o) Grounds shall be maintained in a clean, orderly, and safe manner. ~~Building and grounds shall be free of refuse, litter, or injurious accumulations.~~

(p) Outside lighting shall be provided at the center's entrances and grounds.

(q) There shall be ~~adequate~~ parking available for safe delivery and pickup of participants.

### 310:605-15-3. Space requirements

(a) ~~Space within the adult day care center shall be provided to accommodate the full range of program activities and services.~~

(ba) A minimum of forty (40) square feet of space shall be provided for each participant, excluding hallways, storage areas, offices, rest rooms, and kitchens.

(eb) Office space shall be ~~sufficient to permit staff to work effectively without interruption provided.~~

(ec) Space shall be provided for special therapies and designated areas to permit privacy.

### 310:605-15-5. Furnishings and equipment

(a) The center shall be furnished adequately to meet the needs of the participants.

(b) ~~Adequate furniture shall be appropriate for use by persons with limited agility. Furniture shall be sturdy and secure. Seating shall provide comfort and sufficiently provided for each participant.~~

(eb) There shall be at least one bed located in a quiet space separate from other program activities.

(ec) Equipment and supplies shall be adequately provided to meet the needs of all participants.

(ed) All furnishings and equipment shall be in ~~good and~~ safe condition and properly maintained.

### 310:605-15-6. Sanitation and housekeeping

(a) Housekeeping and maintenance services shall be sufficiently provided to maintain the center in a clean, orderly, sanitary, and safe manner. The center shall be free of offensive odors.

(b) ~~Toilet and bathroom areas shall be cleaned as needed.~~

(eb) Handwashing facilities in bathrooms and kitchens shall at all times be supplied with soap and disposable towels.

(ec) An insect, rodent, and pest control program shall be maintained and conducted regularly in a manner which continually protects the health and well-being of the participant. There shall be documented evidence of routine efforts of an existing pest control program. Opened windows shall be screened.

(ed) Soiled clothing ~~and linen~~ shall immediately be placed in airtight containers. Clean clothing and linen shall at no time be stored in the same room with soiled clothing and linen.

(fe) There shall be procedures used by the kitchen and laundry which prevent cross-contamination between clean and soiled utensils and clean and soiled linens.

(gf) Waste, trash, and garbage shall be disposed of from the center's premises regularly in accordance to local and state regulations. Refuse containers, inside and outside, shall have tightly fitted lids and left in closed position. ~~All containers shall be maintained clean, odor free, and serviceable.~~

(hg) The center's waste water and sewage shall be discharged into a municipal sewerage system approved by local and state regulations. Where such a system is not available, a facility providing sewage treatment must conform to applicable local and state regulations.

### 310:605-15-7. Fire safety

(a) Fire safety shall be observed at all times. The center shall have an agreement with the local fire service to respond to the facility in the event of an emergency or have access to a 911 emergency service.

(b) Electrical, heating, and cooling systems shall be kept in good repair and safely maintained.

(c) Use of extension cords or temporary wiring shall be prohibited.

(d) All fires shall be reported to the licensing agency within 72 hours. Fires causing injury or death shall be reported immediately. A written report to the Department shall follow a telephone report.

(e) ~~The center's smoking regulations shall be established and conspicuously posted. All smoking shall be supervised. Ash~~

~~trays of safe design and noncombustible material shall be provided.~~

~~(fe)~~ Draperies or other window dressings, upholstery, and other fabrics and decorations shall be fire-resistant.

~~(gf)~~ At least one telephone within the center shall be available to staff in case of an emergency. Emergency telephone numbers shall be posted on the designated emergency telephone to include fire, police, ambulance, and hospital if 911 emergency is not available.

~~(hg)~~ All facilities shall at a minimum have smoke detectors placed appropriately throughout the facility and maintained in good operation.

**310:605-15-8. General safety**

(a) General safety requirements should meet ADA standards and the state minimum standards adopted by the state fire marshal's office.

~~(ab)~~ The center's exterior site conditions shall be designed, constructed, and maintained with consideration for participants' safety. ~~Ramps which are newly constructed shall not exceed 1:12 slope. Walks, ramps, and steps shall be smooth and uniform and have slip resistive texture.~~

~~(bc)~~ Stairways and hallways shall be ~~free of obstructions and shall be~~ well lighted at all times. All stairways shall have non-slip surface. ~~All inside and outside stairs and ramps shall have handrails.~~

~~(ed)~~ All rugs and floor coverings shall be secured to floor. Throw rugs shall not be used.

~~(de)~~ Elevators for participants' use shall be ~~assured~~ maintained in safe condition.

~~(ef)~~ ~~Hot water shall be provided adequately.~~ The hot water system connected to fixtures used by participants shall deliver warm water at a temperature not to exceed 115° F.

~~(fg)~~ Drugs, cleaning agents, pesticides, and poisonous products shall be stored out of reach of the participants and used in a manner which assures the safety of the participants ~~and staff~~.

~~(gh)~~ There shall be no activities adversely affecting the safety of the participant on the premises ~~of the inside or outside~~.

*[OAR Docket #03-632; filed 4-11-03]*

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

*[OAR Docket #03-659]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. General Provider Policies
  - Part 1. General Scope and Administration
    - 317:30-3-3.1 [AMENDED]
    - 317:30-3-25 [AMENDED]
  - Subchapter 5. Individual Providers and Specialties
    - Part 1. Physicians
      - 317:30-5-2 [AMENDED]
    - Part 3. Hospitals
      - 317:30-5-44 [AMENDED]

- Part 5. Pharmacists
  - 317:30-5-70.2 through 317:30-5-70.3 [AMENDED]
  - 317:30-5-72 through 317:30-5-72.1 [AMENDED]
  - 317:30-5-77.2 [AMENDED]
  - 317:30-5-78.1 [AMENDED]
  - 317:30-5-78.2 [AMENDED]
  - 317:30-5-80 [AMENDED]
  - 317:30-5-86 [AMENDED]
- Part 6. Inpatient Psychiatric Hospitals
  - 317:30-5-95.3 [AMENDED]
  - 317:30-5-96 [AMENDED]
- Part 7. Certified Laboratories
  - 317:30-5-104 [AMENDED]
- Part 9. Long Term Care Facilities
  - 317:30-5-122 [AMENDED]
- Part 17. Medical Suppliers
  - 317:30-5-214 [AMENDED]
- Part 19. Nurse Midwives
  - 317:30-5-226 [AMENDED]
- Part 23. Podiatrists
  - 317:30-5-261 [AMENDED]
- Part 25. Psychologists
  - 317:30-5-276 [AMENDED]
- Part 27. Registered Physical Therapists
  - 317:30-5-291 [AMENDED]
- Part 29. Renal Dialysis Facilities
  - 317:30-5-306 [AMENDED]
- Part 33. Transportation by Ambulance
  - 317:30-5-339 [AMENDED]
- Part 35. Rural Health Clinics
  - 317:30-5-359 [AMENDED]
- Part 37. Advanced Practice Nurse
  - 317:30-5-376 [AMENDED]
- Part 45. Optometrists
  - 317:30-5-431 [AMENDED]
- Part 47. Optical Companies
  - 317:30-5-451 [AMENDED]
- Part 49. Family Planning Centers
  - 317:30-5-466 [AMENDED]
- Part 61. Home Health Agencies
  - 317:30-5-546 [AMENDED]
- Part 63. Ambulatory Surgical Centers
  - 317:30-5-567 [AMENDED]
- Part 69. Certified Registered Nurse Anesthetists
  - 317:30-5-606 [AMENDED]
- Part 75. Federally Qualified Health Centers
  - 317:30-5-661 [AMENDED]
- Part 79. Dentists
  - 317:30-5-696 [AMENDED]
- Part 81. Chiropractors
  - 317:30-5-721 [AMENDED]
- Part 89. Radiological Mammographer
  - 317:30-5-903 [AMENDED]
- Part 108. Nutrition Services
  - 317:30-5-1076 [AMENDED]

(Reference APA WF # 02-01, 02-03, 02-06, 02-07, and 02-08)

**AUTHORITY:**

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 447.1 through 447.361; 42 U.S.C. § 1396 (a)(30); House Bill 1429, Section 2 (63 Okla. Stat. § 5024), as amended by House Bill 1194, of the 1<sup>st</sup> Session of the 48<sup>th</sup> Legislature; 56 Okla. Stat. 1010(B)(7); 42 USC § 1396(a)(13)(a); 42 USC § 1396(n)(2); Article X, Section 23 of the Oklahoma Constitution; 63 Okla. Stat. § 5006(A)(1); 42 USC § 1396a(a)(30)(A); 42 USC § 1396(w)(1)(A); 42 CFR § 433.51; 42 CFR § 447.272

**DATES:**

**Comment period:**

December 16, 2002 through January 15, 2003

**Public hearing:**

None held or requested

**Adoption:**

February 13, 2003

**Submitted to Governor:**

February 18, 2003

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**Submitted to House:**

February 18, 2003

**Submitted to Senate:**

February 18, 2003

**Gubernatorial approval:**

April 4, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on

April 11, 2003

**Final adoption:**

April 11, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:****Superseded rules:**

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-47. [AMENDED]

Part 6. Inpatient Psychiatric Hospitals

317:30-5-96. [AMENDED]

(Reference APA WF # 02-01)

**Gubernatorial approval:**

April 30, 2002

**Register publication:**

19 Ok Reg 2762

**Docket number:**

02-1228

**Superseded rules:**

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-47 [AMENDED]

(Reference APA WF # 02-10)

**Gubernatorial approval:**

June 27, 2002

**Register publication:**

19 Ok Reg 2939

**Docket number:**

02-1290

**Superseded rules:**

Subchapter 3. General Scope and Administration

Part 1. General Scope and Administration

317:30-3-3.1 [AMENDED]

(Reference APA WF # 02-03)

**Gubernatorial approval:**

July 16, 2002

**Register publication:**

19 Ok Reg 2937

**Docket number:**

02-1292

**Superseded rules:**

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacists

317:30-5-70.2 through 317:30-5-70.3 [AMENDED]

317:30-5-72 through 317:30-5-72.1 [AMENDED]

317:30-5-77.2 [AMENDED]

317:30-5-78.1 [AMENDED]

317:30-5-80 [AMENDED]

(Reference APA WF # 02-06)

**Gubernatorial approval:**

April 24, 2002

**Register publication:**

19 Ok Reg 2773

**Docket number:**

02-1226

**Superseded rules:**

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-44 [AMENDED]

Part 6. Inpatient Psychiatric Hospitals

317:30-5-95.3 [AMENDED]

Part 9. Long Term Care Facilities

317:30-5-122 [AMENDED]

(Reference APA WF # 02-07)

**Gubernatorial approval:**

June 27, 2002

**Register publication:**

19 Ok Reg 2938

**Docket number:**

02-1291

**Superseded rules:**

Subchapter 3. General Provider Policies

Part 1. General Scope and Administration

317:30-3-25 [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-2 [AMENDED]

Part 5. Pharmacists

317:30-5-78.1 [AMENDED]

Part 7. Certified Laboratories

317:30-5-104 [AMENDED]

Part 17. Medical Suppliers

317:30-5-214 [AMENDED]

Part 19. Nurse Midwives

317:30-5-226 [AMENDED]

Part 23. Podiatrists

317:30-5-261 [AMENDED]

Part 25. Psychologists

317:30-5-276 [AMENDED]

Part 27. Registered Physical Therapists

317:30-5-291 [AMENDED]

Part 29. Renal Dialysis Facilities

317:30-5-306 [AMENDED]

Part 33. Transportation by Ambulance

317:30-5-339 [AMENDED]

Part 35. Rural Health Clinics

317:30-5-359 [AMENDED]

Part 37. Advanced Practice Nurse

317:30-5-376 [AMENDED]

Part 45. Optometrists

317:30-5-431 [AMENDED]

Part 47. Optical Companies

317:30-5-451 [AMENDED]

Part 49. Family Planning Centers

317:30-5-466 [AMENDED]

Part 61. Home Health Agencies

317:30-5-546 [AMENDED]

Part 63. Ambulatory Surgical Centers

317:30-5-567 [AMENDED]

Part 69. Certified Registered Nurse Anesthetists

317:30-5-606 [AMENDED]

Part 75. Federally Qualified Health Centers

317:30-5-661 [AMENDED]

Part 79. Dentists

317:30-5-696 [AMENDED]

Part 81. Chiropractors

317:30-5-721 [AMENDED]

Part 89. Radiological Mammographer

317:30-5-903 [AMENDED]

Part 108. Nutrition Services

317:30-5-1076 [AMENDED]

(Reference APA WF # 02-08)

**Gubernatorial approval:**

June 27, 2002

**Register publication:**

19 Ok Reg 2922

**Docket number:**

02-1289

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Medical Providers-Fee for Service rules are revised to: (1) adjust the payment methodology used for payment of Graduate Medical Education (GME) funds to qualifying hospitals, and (2) allow an all-inclusive per diem rate for out-of-state certain residential treatment facilities. The current payment methodology used for Graduate Medical Education pays qualifying hospitals based as an add-on to their fee-for-service rates (cost report data from the base year) and from a "supplemental" GME program which pays

to the hospitals from a pool of funds. The pool of funds is made available by State matching funds provided by the University Hospital Authority. Revisions to the payment methodology would remove the provision in the fee-for-service rate section that allows for a component of the rate to pay for GME. The funds that are paid through this section will be rolled into the "supplemental" GME pool and paid through that system. This will allow the Agency to simplify GME payments by combining all funds into one program and also allow the Managed Care Plans to negotiate with hospitals that have GME and those that do not without having GME as an obstacle to negotiations. Additionally, revisions are needed in the "supplemental" GME payment method that incorporates the funds from above and distributes the resulting pool of funds in a more equitable fashion. Currently the monies available are allocated quarterly to the hospitals based solely on the number of resident-months that are supported by the hospitals. This method does not take into consideration the Medicaid services rendered. Therefore, revisions are being made to the method which will allocate the funds based on the relative value of those resident-months weighted by the Medicaid services rendered. This relative value will be determined by multiplying the resident-months by the eligible patient days and by the individual hospital acuity factor determined from MMIS data. The total relative value of each hospital will be used to allocate the funds. The results of the GME revisions will allow for the allocation of funds based on all three factors which satisfy the rules governing the payment of services, which state that the payments should be for the Medicaid portion of those expenses to the hospitals. The proposed changes will allow the Agency to distribute the funds for Direct Graduate Medical Education by number of resident months weighted for Medicaid services rendered by acuity of those services as opposed to the current method which only uses number of resident-months as a measure. Other rule revisions are needed to accommodate the payment arrangements for children needing specialized residential treatment programs (such as hearing impairments with behavioral health problems and eating disorder programs) that are not available in Oklahoma. Current rules state that out-of-state facilities shall be reimbursed in the same manner as in-state residential psychiatric treatment centers. However, due to the specialized needs of the client and Oklahoma's generally lower reimbursement rate, many out-of-state facilities will not accept Oklahoma's Medicaid per diem. This has become an ongoing monthly payment adjustment issue for the Agency's Financial Services Division. For now, the out-of-state residential treatment rates are being negotiated by the Behavioral Health Services Unit for children, many of which are in DHS custody. Finance has determined that generally, the rates are no more than what would be paid if the provider billed for the residential programming services and the physicians charges separately. An additional revision is made to agree with amendments to the Code of Federal Regulations (CFR), by adding the Commission on Accreditation of Rehabilitation Facilities (CARF) as an acceptable source of accreditation for residential treatment centers who contract with OHCA to provide services.

Medical Providers-Fee for Service rules are revised to establish the Medicaid Income Deferral Program as authorized in House Bill 1429, as amended by House Bill 1194, of the 1<sup>st</sup> Session of the 48<sup>th</sup> Legislature. The purpose of the program is to provide an incentive to physician corporations to participate in the Medicaid program. The program allows physician corporations to defer income from Medicaid payments on a pre-tax basis as long as the corporation continues to participate in Medicaid. This voluntary program helps the Agency meet the statutory mandate of providing recipient access to physician services by aiding in the recruitment and retention of Medicaid providers. Rule revisions are needed to comply with House Bill 1429, as amended by House Bill 1194, of the 1<sup>st</sup> Session of the 48<sup>th</sup> Legislature, to establish the Medicaid Income Deferral Program.

Medical Providers-Fee for Services, Pharmacists specific, rules are revised to remove the acute dosing restriction for certain anti-ulcer medications. By implementing this proposed rule change, there will be a decrease in Medicaid administrative costs by reducing the number of prior authorization requests that must be addressed by the pharmacists at the Pharmacy Help Desk as well as a decrease in the cost of medication. The "hassle factor" experienced by providers and clients in obtaining medication for chronic conditions will be greatly decreased. This class of drugs has been monitored over the past two years through utilization of the prior authorization system. It does not appear that providers of clients are using this class of drugs in a manner inconsistent with the manufacturers recommended dosage guidelines. The majority of the patients who most often require this medication are elderly and debilitated. Additional revisions add coverage of the drug Adderall XR to the list of products covered for the treatment of Attention Deficit Hyperactivity Disorder (ADHD) and Narcolepsy in the exceptions to the excluded drug categories. The rule change includes revised language designed to clarify the requirements

necessary for prior authorization of drugs in this therapeutic category. This change was precipitated by the availability of a newly marketed slow release product that allows for a once a day treatment and by a desire to clarify the language of the current rule. Rule revisions are needed to provide proper therapy to clients diagnosed with Attention Deficit Hyperactivity Disorder and Narcolepsy, while conforming to medically accepted best practices for those conditions. Other revisions provide clarification on record retention, prescriber numbers, billing, coverage, third party liability, compensability, and reimbursement. Previous rule revisions that were inadvertently omitted from several of these Sections will be incorporated into rules.

Medical Providers-Fee for Service rules are revised to reduce payments to 50% of the coinsurance for Skilled Nursing Facility (SNF) crossover days. Current rules for Long Term Care Facilities state that payment is made for Part A coinsurance only for Medicare covered skilled nursing facility care for certain dually eligible individuals. Due to Agency and State budgetary constraints and the Oklahoma Constitutional requirement to maintain a balanced budget, the Agency identified several program areas in which significant savings could be made. By reducing the Medicare Part A coinsurance for Medicare covered skilled nursing facility care to 50%, the Agency is estimating an annual state savings of \$1.2 million. Long Term Care Facilities that are contracted with Agency to provide these services are able to recover the monetary difference in their Medicare cost report settlements. Other revisions clarify the Medicare Part A crossover claim's filing process. Revisions to Medicaid Providers-Fee for Services rules are needed in order for the Agency to accomplish a reduction in spending for Medicare Part A SNF crossover services.

Medical Providers-Fee for Service rules are being revised to convert crossover Medicare Part B coinsurance and deductible payments from a percentage value to the Medicaid allowable for comparable services. Currently, rules specify that crossover Medicare Part B claims are paid at the rate of 94 percent of the deductible and 75 percent of the coinsurance. Due to Agency and State budgets constraints, the Agency's Board, through an emergency declaration, approved emergency action in January 2002 to reduce the Medicaid crossover payment to 75 percent of the deductible and eliminate the payment for coinsurance through June 30, 2002. As the financial situation for the Agency and the State has not improved since that time, rules are in need of revision in order to reduce Medicaid crossover payments for Part B services effective July 1, 2002. Agency staff estimates that an annual budget savings of \$9.5 million dollars in state funds will be achieved if the proposed reductions are implemented. Other revisions will remove obsolete language regarding payments for services for Vocational Rehabilitation Services as the Agency is no longer responsible for payment of these claims.

#### CONTACT PERSON:

Joanne Terlizzi at 522-7272

**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 MAY 27, 2003.**

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 1. GENERAL SCOPE AND ADMINISTRATION

#### 317:30-3-3.1. Physician Medicaid Income Deferral Program

(a) The Physician Medicaid Income Deferral Program is a program that enables physician corporations, as defined in Title 59 of the Oklahoma Statutes, to voluntarily defer income that is paid to the corporation by the Single State Medicaid Agency.

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(b) The voluntary income deferral by physician corporations (medical doctors, osteopathic physicians, dentists, surgeons, podiatrists, chiropractors, optometrists, and ophthalmologists) shall be subject to any federal ~~limitations provisions~~ imposed by the Internal Revenue Code, Title 26 of the United States Code. The Health Care Authority may, ~~under a written agreement, contract with an administrator to invest the deferred compensation in life insurance, annuities, United States Treasury Bills, Notes or Bonds, savings accounts and/or mutual funds with a company licensed to do business in the state. Investment options will be left to the discretion of the corporation~~ adopt a Plan which provides for the investment of deferral amounts in life insurance or annuity contracts which offer a choice of underlying investment options. The Plan shall provide that each physician corporation exercise those options independently from among choices offered by such contracts. Contract issuing companies shall be limited to companies which are licensed to do business in the state of Oklahoma.

(c) To be eligible for this program a physician corporation must have an existing contract with the Oklahoma Health Care Authority and the corporation must perform that contract for the term of the agreement. ~~In the case the contract is terminated by either party, the benefits under the program to eligible corporation employees will be forfeited. If a physician corporation fails to fulfill its service obligations under the contract, all deferral amount assets held for the benefit of that corporation shall be forfeited.~~

(d) ~~The taxable benefits to corporation employees are limited to the amount of the payment from the Health Care Authority to the Physician Corporation. Benefits inure to the corporation prospectively only after their enrollment into the program. In the event Medicaid contracted physicians terminate employment with the corporation the amount of the deferral benefit may decrease. No benefits may be received by the corporation without independent tax advice regarding the advisability of participating in the program. No physician corporation shall be permitted to participate in the Plan without having prior independent tax and legal advice to do so.~~

### 317:30-3-25. Crossovers (coinsurance and deductible)

(a) Payment is made in behalf of eligible individuals for the Medicare Part B coinsurance and/or deductible due after payment has been made by the Medicare carrier. Payment is made ~~at the rate of 94 percent of the deductible and 75 percent of the coinsurance~~ utilizing the Medicaid allowable for comparable services. For claims filed by Oklahoma providers, assigned claims will automatically cross over from the Medicare carrier. Out-of-state providers must file a properly completed HCFA-1500 and attach a copy of the Medicare Payment Report.

(b) Payment is also made for Hospital Part B coinsurance and deductible for eligible individuals at the same rate as physician coinsurance and deductible. Claims for Hospital Part B coinsurance and deductible will be filed on claim Form UB-92, attaching the Medicare Payment Report.

(c) The Part A deductible is paid for categorically needy individuals only.

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 1. PHYSICIANS

#### 317:30-5-2. General coverage by category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Authority's medical programs, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services may be based on a determination made by the medical consultant in individual circumstances.

(1) Coverages include the following:

(A) Effective August 1, 2000, all general acute care inpatient hospital services for all persons 21 years of age or older, will be limited to 24 days per person per state fiscal year (July 1 through June 30). This limitation does not apply to free-standing psychiatric facilities providing inpatient treatment to persons under 21 years of age and 65 years of age and older. The 24 days limitation applies to both hospital and physician services. Payment will be made for up to 24 hospital days paid on hospital claims during a state fiscal year for each individual recipient. These days will be maintained on the recipient record. Physician claims for hospital visits will be paid until the last compensable hospital day is captured. After 24 hospital days have been captured, no inpatient physician services will be paid beyond the last compensable hospital day. No exceptions or extensions will be made to the 24 day inpatient services limitation. All inpatient services are subject to post-payment review by the OHCA, or its designated agent. Effective October 1, 1993, for all persons ages 21 to 65 years, there is no coverage for inpatient chemical dependency treatment and inpatient detoxification is limited to a maximum of five days per admission and subject to post payment review.

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One inpatient visit per day, per physician.

(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgical center or a Medicare certified hospital that offers outpatient surgical services. Refer to the List of Covered Surgical Procedures.

(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for persons with proven malignancies or opportunistic infections.

(G) Direct physicians' services are covered on an outpatient basis. A maximum payment of two visits are covered per month per patient in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed

for those services related to emergency medical conditions and for services in connection with Family Planning.

(H) Direct physicians' services in a nursing facility for those patients approved for nursing care. Payment is made for a maximum of two nursing facility visits per month. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/Medicaid patient, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

(I) Payment is made for medically necessary diagnostic x-ray and laboratory work.

(J) One screening mammogram and one follow-up mammogram every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms. This includes interpretation and technical component.

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure. Payment is made based upon an invoice for the item.

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs under the jurisdiction of the Authority. A copy of the authorization, DHS form ABCDM-16, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician personally sees a patient on the same day as a dialysis treatment, payment can be made for a separately identifiable service unrelated to the dialysis.

(O) Family planning - including sterilization procedures for legally competent persons 21 years of age and over who voluntarily request such a procedure and, with their physician, execute the Federally mandated consent form (ADM-71). A copy of the consent form must be attached to the claim form. Separate payment is made for an I.U.D. inserted during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception are not covered. Reversal of sterilization procedures may be covered when medically indicated and substantiating documentation is attached to the claim. The Norplant System for birth control is covered; however, removal of the Norplant System prior to five years is covered only when documented as medically necessary. Reinsertion of Norplant contraceptive will be considered on a case by case basis.

(P) Genetic counseling (requires special medical review prior to approval).

(Q) Blood count weekly for persons receiving the drug Clozaril.

(R) Complete blood count and platelet count prior to receiving chemotherapeutic agents or radiation

therapy and for persons receiving medication such as DPA-D-Penicillamine on a regular basis for treatment other than malignancies.

(S) Payment of ultrasounds for pregnant women as specified in OAC 317:30-5-22.

(T) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the patient in conformity with Federal regulations.

(U) Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:

(i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;

(ii) Board certification or completion of an accredited residency program in the fellowship specialty area;

(iii) Hold unrestricted license to practice medicine in Oklahoma;

(iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;

(v) Seeing patients without supervision;

(vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;

(vii) Submit billing in own name with appropriate Oklahoma Medicaid provider number.

(viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.

(V) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.

(i) Attending physician performs chart review and sign off on the billed encounter;

(ii) Attending physician present in the clinic/or hospital setting and available for consultation;

(iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(W) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:

(i) the patient must be at least minimally examined and reviewed by the attending physician or a licensed physician under the supervision of the attending physician;

(ii) This contact must be documented in the medical record.

(X) Payment to a physician for supervision of CRNA services unless the CRNA bills directly.

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- (Y) One pap smear per year for women of child bearing age. Two follow-up pap smears are covered when medically indicated.
- (Z) Organ and tissue transplantation services for children and adults, limited to bone marrow, stem cells, cornea, heart, kidney, liver, lung, SPK (simultaneous pancreas kidney), PAK (pancreas after kidney), and heart-lung, are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:
- (i) All transplantation services, except kidney and cornea, must be prior authorized to be compensable.
  - (ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.
  - (iii) To be compensable under the Medicaid program all organ transplants must be performed at a Medicare approved transplantation center.
  - (iv) Finally, procedures considered experimental or investigational are not covered.
- (AA) Total parenteral nutritional therapy for certain diagnoses and when prior authorized.
- (BB) Ventilator equipment.
- (CC) Home dialysis equipment and supplies.
- (DD) Ambulatory services for treatment of persons with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-46 require prior authorization by the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy". Ambulatory services to persons infected with TB are not limited to the scope of the Medicaid program, but require prior authorization when the scope is exceeded.
- (2) General exclusions include the following:
- (A) Inpatient diagnostic studies that could be performed on an outpatient basis.
  - (B) Services or any expense incurred for cosmetic surgery including removal of benign skin lesions.
  - (C) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.
  - (D) Refractions and visual aids.
  - (E) Separate payment for pre and post-operative care when payment is made for surgery.
  - (F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
  - (G) Sterilization of persons who are under 21 years of age, mentally incompetent or institutionalized. Reversal of sterilization procedures for the purposes of conception.
  - (H) Non-therapeutic hysterectomy.
  - (I) Medical services considered to be experimental or investigational.
  - (J) Payment for more than two outpatient visits per month (home or office) per patient except those visits in connection with family planning, or related to emergency medical conditions.
  - (K) Payment for more than two nursing facility visits per month.
  - (L) More than one inpatient visit per day per physician.
  - (M) Physician supervision of hemodialysis or peritoneal dialysis.
  - (N) Physician services which are administrative in nature and not a direct service to the patient including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.
  - (O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
  - (P) Payment for the services of physicians' assistants, social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out.
  - (Q) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (See OAC 317:30-5-6 or 317:30-5-50.)
  - (R) Night calls or unusual hours.
  - (S) Speech and Hearing services.
  - (T) Treatment for obesity, including weight reduction surgery.
  - (U) Mileage.
  - (V) Other than routine hospital visit on date of discharge unless patient expired.
  - (W) Direct payment to perfusionist as this is considered part of the hospital cost.
  - (X) Inpatient chemical dependency treatment.
  - (Y) Fertility treatment.
  - (Z) Routine immunizations.
- (b) **Children.** Payment is made to physicians for medical and surgical services for persons under the age of 21 within the scope of the Authority's medical programs, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for patients under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services will be prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services will not be Medicaid compensable.

(A) Effective October 1, 1993, all residential and acute psychiatric services will be authorized based on the medical necessity criteria as described in OAC 317:30-5-46.

(B) Out of state placements will not be authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for recipients in a particular border locality to use resources in another state. If a medical emergency occurs while a client is out of the state, treatment for medical services will be covered in the same way as they would be covered within the state. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for persons under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options.

(A) Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation which validates the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-46. Requests shall be made prior to the expiration of the approved inpatient stay.

(B) If a denial decision is made, a reconsideration request may be made directly to the OHCA, or its designated agent and should occur within 3 days of the denial notification due to the timeliness of processing such a request with the patient still in the facility. The request for reconsideration shall include new and/or additional medical information to justify the need for continued care.

(4) **Utilization control requirements for psychiatric beds.** Medicaid utilization control requirements for inpatient psychiatric services for persons under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.** Payment is also made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of individuals under age 21. The EPSDT program is a comprehensive child health program,

designed for ensuring the availability of and access to required health care resources and helping parents and guardians of Medicaid eligible children effectively use these resources. An effective EPSDT program assures that health problems found are diagnosed and treated early before they become more complex and their treatment more costly. The physician plays a significant role in educating parents and guardians in all services available through the EPSDT program. The receipt of an identified EPSDT screening makes the Medicaid child eligible for all necessary follow-up care that is within the scope of the Medicaid Program. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the Authority's current program. Such services must be allowable under the Federal Regulations. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and will require prior authorization. The following services are covered under EPSDT:

(A) The Oklahoma Program adopted the following recommendations which includes at least:

- (i) Six screenings during the first year of life;
- (ii) Two screenings in the second year;
- (iii) One screening yearly for ages two thru five years; and
- (iv) One screening every other year for ages 6 thru 20 years.

(B) Periodicity schedules for screening, dental, vision and hearing, and other services include:

(i) **Screening services.** Comprehensive examinations performed by a licensed physician, dentist or other provider qualified under State law to furnish primary medical and health services are covered. See OAC 317:30-3-47 for EPSDT services. Screenings must include all of the following:

- (I) A comprehensive health and developmental history (including assessment of both physical and mental health development);
- (II) A comprehensive unclothed physical exam;
- (III) Appropriate immunizations according to age and health history;
- (IV) Laboratory tests (including lead blood level assessment appropriate to age and risk); and
- (V) Health education (including anticipatory guidance).

(ii) **Vision services.** At a minimum, vision services include diagnosis and treatment for defects in vision, including eyeglasses. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal.

(iii) **Dental services.** At a minimum, dental services include relief of pain and infections, restoration of teeth and maintenance of dental health. Dental services may not be limited to

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emergency services. Coverage also includes inpatient services in an eligible participating hospital, outpatient dental screening every 12 months, two bite-wing x-rays, and/or oral prophylaxis one each 12 months; other restoration, repair and/or replacement of dental defects after the treatment plan submitted by a dentist has been authorized. This includes amalgam and composite restoration, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, cement bases, acrylic flippers, and lingual arch bars. (Refer to Dental Provider Manual for limitations.)

(iv) **Hearing services.** At a minimum, hearing services include diagnosis and treatment for defects in hearing, including hearing aids. Hearing aid evaluation once every 12 months and purchase of a hearing aid when prescribed as a result of the hearing aid evaluation.

(v) **Immunizations.** Federal legislation created the Vaccine for Children Program to be effective October 1, 1994. Vaccines will be provided free of charge to all enrolled providers for Medicaid eligible children. Participating providers may bill for an administration fee to be set by HCFA on a regional basis. They may not refuse to immunize based on inability to pay the administration fee. Medicaid will continue to pay non-participating providers for vaccines and an administration fee of \$2.10 until April 1, 1995, when Federal Financial Participation will no longer be available.

(vi) **Appropriate laboratory tests.** Use medical judgement in determining the applicability of the laboratory tests or analyses to be performed. If any laboratory tests or analyses are medically contraindicated at the time of the screening, provide them when no longer medically contraindicated laboratory tests should only be given when medical judgement determines they are appropriate. However, laboratory tests should not be routinely administered.

(I) As appropriate, conduct the following laboratory tests: Anemia test; Sick cell test. If a child has been properly tested once for sickle cell disease, the test need not be repeated. Tuberculin test. Give a tuberculin test to every child who has not received one within a year.

(II) Lead toxicity screening. Where age and risk factors indicate it is medically appropriate to perform a blood level assessment, a blood level assessment is mandatory. See OAC 317:30-3-50 for required lead screening guidelines.

(vii) **Other necessary health care.** Other necessary health care, diagnostic services, treatment and other measures to correct or ameliorate defects, and physical and mental illnesses and conditions discovered by the screening services.

(I) Interperiodic screenings outside the periodicity schedule for screening examinations are allowed at necessary intervals when a medical condition is suspected.

(II) Outpatient care for acute physical injury.

(III) Prescribed drugs beyond the three prescription limitation.

(IV) Inpatient psychotherapy for individuals under 21 years of age when prior authorized. Payment is made to psychologists who are licensed to practice.

(V) Inpatient psychological testing. Limited to one hour per recipient each 12 months. If medically necessary, additional hours will be prior authorized. Payment is made to psychologists who are licensed to practice.

(VI) Outpatient psychological services for eligible individuals under 21 years of age when prior authorized. See (V) of this unit for limitations.

(6) **Child abuse/neglect findings.** Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Title 21, Oklahoma Statutes, Section 846, as amended, states in part: *Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents, and interns, examining, attending, or treating a child under the age of eighteen (18) years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, and every other person having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred. Providing it shall be a misdemeanor for any person to knowingly and willfully fail to promptly report an incident as provided above. Persons reporting such incidents of abuse and/or neglect in accordance with the law are exempt from prosecution in civil or criminal suits that might be brought as a result of the report.*

(7) **General exclusions.** The following are excluded from coverage for persons under the age of 21:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up

consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.

(D) Separate payment for pre and post-operative care when payment is made for surgery.

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of persons who are under 21 years of age.

(G) Non-therapeutic hysterectomy.

(H) Medical Services considered to be experimental or investigational.

(I) More than one inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (See OAC 317:30-5-6 or 317:30-5-50.)

(K) Physician supervision of hemodialysis or peritoneal dialysis.

(L) Physician services which are administrative in nature and not a direct service to the patient including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.

(M) Payment for the services of physicians' assistants except as specifically set out.

(N) Direct payment to perfusionist as this is considered part of the hospital cost.

(O) Treatment of obesity including weight reduction surgery.

(P) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(Q) Night calls or unusual hours.

(R) Mileage.

(S) Other than routine hospital visit on date of discharge unless patient expired.

(T) Tympanometry (92567).

(c) **Individuals eligible for Part B of Medicare.** Payment of 94 percent of the deductible and 75 percent of the coinsurance plus any copayment due on Medicare covered services, is an all inclusive payment for assigned claims is made utilizing the Medicaid allowable for comparable services. For in-State physicians, claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits will reflect a message that the claim was referred to Medicaid. If such a message is not present, a claim for coinsurance and deductible must be filed with Medicaid within 90 days of the date of Medicare payment in order to

be considered timely filed. The Medicare EOMB must be attached to the claim. If payment was denied by Medicare Part B, and the service is a Medicaid covered service, mark the claim "denied by Medicare".

(1) Out of state claims will not "cross over". Providers must file a claim for coinsurance and/or deductible within 90 days of the Medicare payment. The Medicare EOMB must be attached to the claim.

(2) Claims filed under Medicaid must be filed within one year from the date of service. For dually eligible individuals, to be eligible for payment of coinsurance and/or deductible under Medicaid, a claim must be filed with Medicare within one year from the date of service.

## PART 3. HOSPITALS

### 317:30-5-44. Medicare eligible individuals

Payment is made to hospitals for services to Medicare eligible individuals as set forth in this section.

#### (1) Individuals eligible for part A and part B.

(A) Payment is made ~~for 94 percent of the deductible and 75 percent of coinsurance on utilizing the Medicaid allowable for comparable Part B Services services.~~

(B) Payment is made for the coinsurance and/or deductible for Part A services for categorically needy individuals.

~~(C) There is no provision for payment of the Part A coinsurance on skilled nursing services when the facility is an eligible provider and the payment does not exceed the Medicaid skilled nursing rate.~~

#### (2) Individuals who are not eligible for part A services.

(A) The Part B services are to be filed with Medicare. Any monies received from Medicare and any coinsurance and/or deductible monies received from OHCA must be shown as a third party resource on the appropriate claim form for inpatient per diem. The inpatient per diem should be filed with the fiscal agent along with a copy of the Medicare Payment Report.

(B) ~~Claims for~~ For individuals who have exhausted Medicare Part A benefits, claims must be accompanied by a statement from the Medicare Part A intermediary showing the date benefits were exhausted.

## PART 5. PHARMACISTS

### 317:30-5-70.2. Record retention

Pharmacies are selected at random for audits. The Pharmacy is required to provide original written prescriptions and signature logs as well as ~~the necessary~~ purchase invoices and other records necessary to document their compliance with program guidelines at the time of the audit. Failure to provide the requested information to the Authority Reviewer may result in a recommendation ranging from a potential recoupment of Medicaid's payment for the service to contract termination.

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### 317:30-5-70.3. Prescriber numbers

A prescriber number is a unique identifier maintained and controlled by OHCA. It is a seven digit number to identify the individual provider. A list of prescriber numbers is furnished annually in electronic file format to each participating pharmacy. New versions of the prescriber file include updated resident information. Failure to use correct prescriber numbers may result in total recoupment of funds paid to a provider for claims billed incorrectly.

### 317:30-5-72. Categories of service eligibility

#### (a) Coverage for adults.

(1) **Categorically needy.** Prescription drugs for categorically needy adults are covered as set forth in this subsection.

(A) With the exception of (B) and (C) of this paragraph, categorically needy adults are eligible for three covered prescriptions per month.

(B) For categorically related adults who are residents of Nursing Facilities, private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) or who are persons eligible under any Home and Community Based Waiver program (for example the Developmentally Disabled Waiver, the ADvantage Waiver, or the In-Home Support Waiver) are eligible for all medically necessary prescriptions subject to the limitations set forth in OAC 317:30-5-72.1, OAC 317:30-5-77.2 and OAC 317:30-5-77.3.

(C) Drugs exempt from the three prescription limit include: Antineoplastics, ~~anti-viral agents for the treatment of opportunistic infections for persons diagnosed with acquired immune deficiency syndrome (AIDS)~~ anti-retroviral agents for persons diagnosed with Acquired Immune Deficiency Syndrome (AIDS) or who have tested positive for the Human Immunodeficiency Virus (HIV), certain prescriptions which require frequent laboratory monitoring, birth control prescriptions, over the counter contraceptives, hemophilia drugs, compensable smoking cessation products, certain solutions used in compounds (i.e. sodium chloride, sterile water, etc.), and drugs used for the treatment of tuberculosis are excluded from the prescription limitation. For purposes of this Section, exclusion from the three drug prescription limit means ~~the receipt of claims filed for~~ any of these prescriptions will not count against toward the three ~~covered prescription prescriptions drug limit~~ allowed per month.

(2) **Medically needy.** With the exception of individuals who are eligible under OAC 317:35-7-45 (individuals eligible because of catastrophic illness), medically needy adults are not covered in the prescription drug program. For those individuals who are eligible because of catastrophic illness coverage the prescription drug benefit is limited to three drugs per month. Eligibility for catastrophic illness is a portion of Oklahoma's medically needy program.

(A) Each medically needy applicant classified as having a catastrophic illness, within that definition, who meets the Medicaid standards of eligibility receives a medical ID card.

(B) If a medically needy adult is approved under the catastrophic provision with a spenddown, all prescriptions will be applied toward the spenddown until the full amount is met.

(b) **Coverage for children (categorically and medically needy).** Prescription drugs for Medicaid eligible individuals under 21 years of age are not limited.

(c) **Individuals eligible for Part B of Medicare.** Individuals eligible for Part B of Medicare are eligible for a prescription drug benefit.

### 317:30-5-72.1. Drug benefit

OHCA administers and maintains an Open Formulary subject to the provisions of Title 42, United States Code (U.S.C.), Section 1396r-8. The Authority covers any drug for its approved purpose that has been approved by the Food and Drug Administration (FDA) for manufacturers who have entered into a drug rebate agreement with the ~~federal government~~ Centers for Medicare and Medicaid Services, (CMS) formerly known as the Health Care Financing Administration (HCFA) subject to the following exclusions, and limitations.

(1) The following drugs, classes of drugs, or their medical uses are excluded from coverage:

(A) Agents used to promote fertility.

(B) Agents primarily used to promote hair growth.

(C) Agents used for cosmetic purposes.

(D) Agents used for the symptomatic relief of coughs and colds. Cough and cold drugs are not covered.

(E) Vitamins and Minerals.

(F) Agents used primarily for the treatment of anorexia or weight gain. Drugs used primarily for the treatment of obesity, such as appetite suppressants are not covered. Drugs used primarily to increase weight are not covered unless otherwise specified.

(G) Agents used for smoking cessation. Nicotine replacement products are not covered.

(H) Food supplements.

(I) Agents that are experimental or whose side effects make usage controversial.

(J) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or designee.

(K) Over-the-counter drugs. Over-the-counter medications are not covered except for those medications listed in Paragraph (3) of this subsection.

(2) The exceptions to the exclusions provided in subsection OAC 317:30-5-72.1(1) are as follows:

(A) Agents used for the systematic relief of cough and colds. Antihistamines for allergies or antihistamine use associated with asthmatic conditions may

be covered when medically necessary and prior authorized. Non-sedating antihistamines are covered for children without prior authorization.

(B) Vitamins and Minerals. Vitamins and minerals are not covered except under the following conditions:

- (i) prenatal vitamins are covered for pregnant women up to age 50;
- (ii) fluoride preparations are covered for persons under 16 years of age or pregnant; and
- (iii) calcifediol/calciferol when used to treat end stage renal disease are covered.

(C) Agents used primarily for the treatment of anorexia or weight gain. There is limited coverage of ~~some anorexians~~ under the scope based prior authorization.

(D) Agents used for smoking cessation. A limited smoking cessation benefit is available through ~~OAC 317:30-5-77.2(e)(1)(B)(II)~~ OAC 317:30-5-77.2(e)(1)(B)(ii).

(E) Over the counter drugs. Insulin and the following family planning products are covered.

- (i) Male and Female Condoms.
- (ii) Contraceptive sponges.
- (iii) Diaphragms.
- (iv) Spermicidal jellies, creams, suppositories, and foams.

(3) All covered outpatient drugs are subject to prior authorization as provided in OAC 317-30-5-77.2 and 317:30-5-77.3.

(4) All covered drugs may be excluded or coverage limited if:

- (A) the prescribed use is not for a medically accepted indication as provided under 42 U.S.C. § 1396r-8;
- (B) the drug is subject to such restriction pursuant to the rebate agreement between the manufacturer and the Health Care Financing Administration;
- (C) OHCA has excluded coverage of the drug from its formulary established by the State as provided under 42 U.S.C. § 1396r-8.

**317:30-5-77.2. Prior authorization**

(a) **Definition.** The term prior authorization means an authorization by OHCA to the pharmacist to fill the prescription before it is filled by the pharmacist.

(b) **Process.** Because of the required interaction between a prescribing provider (such as a physician) and a pharmacist to receive a prior authorization, OHCA allows a pharmacist up to a 30 calendar day period from the point of sale notification to provide the data necessary for OHCA to make a decision regarding prior authorization. Should a pharmacist fill a prescription prior to the actual authorization he/she takes a business risk that the claim for filling the prescription will be denied. In the case that information regarding the prior authorization is not provided within the 30 day calendar period, claims will be denied.

(c) **Documentation.** OHCA administers a prior authorization program through a contract with an agent. Prior Authorization requests with clinical exceptions must be mailed or faxed to the Medication Authorization unit of the agent. Other authorization requests, claims processing questions and questions pertaining to DUR alerts must be addressed by contacting the Pharmacy help desk. Authorization requests with complete information are reviewed and a response returned to the dispensing pharmacy within 24 hours.

(d) **Emergencies.** In an emergency situation the Health Care Authority will authorize a 72 hour supply of medications to a client. The authorization for a 72 hour emergency supply of medications does not count against the Medicaid limit described in OAC 317:30-5-72(a)(1).

(e) **Utilization and scope.** There are three reasons for the use of prior authorization: utilization controls, product based controls, and scope controls. Scope controls refer to constraints used to insure a drug is used for approved indications and is therapeutically appropriate.

(1) **Utilization.**

(A) **Quantity.** Toradol is covered for eligible individuals for a quantity up to 22 tablets or a 5 day supply which ever is less, each month. Prior authorization is required when additional coverage is medically necessary beyond this limit.

(B) **Duration.**

(i) **H2 antagonists/proton pump inhibitors/carafate.** H2 ~~receptor~~ antagonists, ~~proton pump inhibitors~~ and Carafate are covered for eligible individuals for 90 days of therapy in the previous 360 days. ~~Prior authorization is required for proton pump inhibitors when additional coverage is medically necessary beyond this limit.~~ H2 antagonists and Carafate do not require prior authorization when prescribed at ~~maintenance doses~~ the recommended doses or lower after the 90 day limit. The following are ~~clinically established maintenance recommended doses~~ recommended doses for these drugs.

- (I) Drug name: Ranitidine (Zantac); ~~Maintenance dose: 150mg~~ 300mg per day
- (II) Drug name: Cimetidine (Tagamet); ~~Maintenance dose: 400mg~~ 800mg per day
- (III) Drug name: Famotidine (Pepcid); ~~Maintenance dose: 20mg~~ per day
- (IV) Drug name: Nizatidine (Axid); ~~Maintenance dose: 150mg~~ per day
- (V) Drug name: Sucralfate (Carafate); ~~Maintenance dose: 1000mg~~ twice four times per day

(ii) **Smoking cessation products.** A 90-day smoking cessation benefit consisting of Zyban, prescription nicotine patches, or Zyban/patch combination is covered once per twelve months when prior authorized. Any additional coverage is considered on a case by case basis.

(iii) **Benzodiazepines and barbiturates.** Barbiturates and Benzodiazepines are covered for

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eligible individuals for 90 days of therapy in the previous 360 days. Prior authorization is required when additional coverage is medically necessary beyond this limit.

(iv) **Hypnotics.** Ambien a hypnotic medication similar in activity to benzodiazepines is covered for eligible individuals for 90 days of therapy in the previous 360 days. Prior authorization is required when additional coverage is medically necessary beyond this limit.

(2) **Scope.**

(A) **Antihistamines.** Legend antihistamines are covered only after a previous trial with an over-the-counter antihistamine. The trial should be with an antihistamine that exhibits comparable characteristics to the legend alternative. Also, the trial should have been in the last three months and be of adequate dose and duration. Non-sedating antihistamines for children under 21 years of age are exempt from the prior authorization program as put forth in Oklahoma Statutes.

(B) **Growth Hormone.** Growth Hormone is a covered medication via the prior authorization program provided the patient meets the applicable criteria for initiation and continuance of treatment. The following are the specific indications in which growth hormone therapy will be considered for coverage:

- (i) the treatment of short stature, Turner's syndrome, hypoglycemia related growth hormone deficiency;
- (ii) physiologic replacement for adults who previously met growth hormone deficiency guidelines as children; and
- (iii) catabolic wasting in AIDS patients.

(C) **Anorexiants.** Limited anorexiant coverage is available for the treatment of Attention Deficit Hyperactivity Disorder (ADHD) and Narcolepsy. ~~Methylphenidate, Methamphetamine/ Dextroamphetamine, Methamphetamine, Pemoline and Dextroamphetamine are covered for children. A prior authorization is required for adults. Methamphetamine and Pemoline require prior authorization for both children and adults. Controlled release methylphenidate is covered for adults and children with a diagnosis of Attention Deficit Hyperactivity Disorder who have had a previous trial of methylphenidate immediate or sustained release, Adderall™, or dextroamphetamine immediate or sustained release. All products require prior authorization for use in adults. The Anorexiants are divided into three categories. The first category requires no prior authorization for children and includes Methylphenidate immediate and controlled release formulations, Dextroamphetamine immediate and controlled release formulations, and the immediate release formulation of Adderall™, including generic equivalents. The second category requires a prior authorization for children and adults and also~~

requires a previous trial with both Methylphenidate and Dextroamphetamine. The products in this category are Pemoline and Methamphetamine. The third category includes Concerta, Metadate CD, and Adderall XR. These drugs require prior authorization for children and adults and a previous trial with a medication from the first category. The prescribing physician must complete and sign the petition for prior authorization. Authorizations will be issued for a one year period.

(D) **TB related medications.** Drugs prescribed for the treatment of TB related morbidities not listed in OAC 317:30-3-46 require prior authorization.

### 317:30-5-78.1. Special billing procedures

(a) **Antihemophilic Factor (AHF) Products.** AHF products are sold by the amount of drug (International Units of AHF) in the container. For their products, regardless of the container size, the package size is always "1". Therefore, pricing assumes that the "package size" actually dispensed is the actual number of units dispensed. Examples: If 250 AHF units are dispensed and multiplied by a unit cost of \$.25, the allowable cost would be \$62.50. Metric Quantity is shown as 250; if 500 AHF units are dispensed and multiplied by a unit cost of \$.25, the allowable would be \$125.00. Metric Quantity is shown as 500.

(b) **Compound and intravenous drugs.** Prescriptions claims for compound and Intravenous (IV) drugs are billed and reimbursed using the NDC number and quantity for each compensable ingredient in the compound or IV, up to ~~twenty five~~ (25) ingredients. Ingredients without an NDC number are not compensable. A dispensing fee as described in OAC 317:30-5-78(a)(5) is added to the total ingredient cost.

(c) **Co-Payment.** The Oklahoma Health Care Authority operates under a waiver of the Medicaid Third Party Cost Avoidance requirement, set out in 42 CFR 433.139, for prescription drug services. Pharmacies may fill prescriptions and file for provided Oklahoma patient/recipients without pursuing the TPL third party liability resources previously required. ~~Because of a Waiver from the federal government the pharmacist need not pursue the third party resource.~~ The pharmacist may also file for the insurance payment. If there is a copayment associated with the private insurance coverage the pharmacists files with OHCA in one of the following manners:

(1) When the cost of the prescription is greater than the co-payment, bill OHCA for the co-payment in the following manner. Show the amount of co-payment in Block 18. Show the amount due from the insurance company in Block 16 and mark "no" in Block 19. This indicates that the insurance company did not deny the claim. Mark "no" only when an insurance payment is shown.

(2) When the cost of the prescription is less than the amount of co-payment, indicate in Block 19 that "yes" the insurance company denied coverage and attach a copy of the and explanation of benefits or computer screen print showing that the co-payment was greater than the billed charges. EMC billers Providers using electronic billing media must retain hard copy denial letters and copies of

cards in their files for a period not to exceed six (6) months from the date of the filing. (This applies to private insurance information only and in no way affects the need to retain prescription and pharmacy claim information for six (6) years.) OHCA will do a random sampling of claims with insurance carrier denied indicator and request supporting documentation. Failure to provide the supporting documentation could result in recoupment of Medicaid payments and an audit of billing procedures.

(d) **Over-the-counter drugs.** Payment for covered over-the-counter medication is made according to the reimbursement methodology in ~~OAC 317:30-5-77(a)(3)~~ OAC 317:30-5-72.1(2)(E) without a dispensing fee.

~~(e) **Coverage for children (categorically and medically needy).** All medications which have a National Drug Code (NDC) number, furnished to eligible individuals under 21 years of age, should be billed on claim form ADM 53 or one of the electronic options available to pharmacies. Any other prescription medication or items furnished by pharmacies which do not have an NDC number should be billed on claim form HCFA 1500.~~

~~(f) **Individuals eligible for Part B of Medicare.** Payment is made for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services, which is an all-inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.~~

**317:30-5-78.2. Falsification of claims**

No pharmacist shall knowingly present or cause to be presented a false or fraudulent claim for payment. No pharmacist shall knowingly make, use or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved. The term knowingly shall mean that a person, with respect to information has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information or acts in reckless disregard of the truth or falsity of the information. Violation of this section may lead to corrective actions, ranging from education of the provider; to recoupment of payment to criminal penalties as prescribed in OAC 317:30-1-18.

**317:30-5-80. National drug code**

All products billed on ~~Pharmacy ADM 53~~ must have a valid National Drug Code. Products which do not have an NDC code ~~must be billed on Form HCFA 1500 are not compensable. The drug code number is an 11-digit coding system, example 00000 0000 00. The first five digits represent the manufacturer (or labeler) of the drug. The next four digits identify drug product. The last two digits represent package size of the product.~~

**317:30-5-86. Drug Utilization Review Program**

(a) OHCA is authorized by federal statute to conduct prospective and retrospective review of pharmacy claims to insure that prescriptions are:

- (1) appropriate,
  - (2) medically necessary, and
  - (3) not likely to result in adverse medical results.
- (b) OHCA is authorized to use this program to educate physicians, other prescribers, pharmacists, and patients and also to conserve program funds and personal expenditures and prevent fraud, abuse and misuse of prescriptions.
- (c) OHCA utilizes a DUR Board with an outside contractor to review and analyze ~~the numerous claims data available.~~ The DUR Board will review and make recommendations on predetermined standards submitted to them by the OHCA contracting firm(s) and, in concert with the retrospective review of claim data, make recommendations for the educational intervention, prospective DUR and the prior authorization process.

**PART 6. INPATIENT PSYCHIATRIC HOSPITALS**

**317:30-5-95.3. Medicare eligible individuals**

Payment is made to hospitals for services to Medicare eligible individuals as set forth in this section.

- (1) **Individuals eligible for part A and part B.**
  - (A) Payment is made for ~~94 percent of the deductible and 75 percent of coinsurance on Part B Services~~ utilizing the Medicaid allowable for comparable Part B services.
  - (B) Payment is made for the coinsurance and/or deductible for Part A services for categorically needy individuals ~~and Qualified Medicare Beneficiaries.~~
  - ~~(C) There is no provision for payment of the Part A coinsurance on skilled nursing services when the facility is an eligible provider and the payment does not exceed the Medicaid skilled nursing rate.~~
- (2) **Individuals who are not eligible for part A services.**
  - (A) The Part B services are to be filed with Medicare. Any monies received from Medicare and any coinsurance and/or deductible monies received from OHCA must be shown as a third party resource in Block 54 of the UB-92 for inpatient per diem. The inpatient per diem should be filed with the fiscal agent along with a copy of the Medicare Payment Report.
  - (B) Claims for For individuals who have exhausted Medicare Part A benefits, claims must be accompanied by a statement from the Medicare Part A intermediary showing the date benefits were exhausted.

**317:30-5-96. Reimbursement for inpatient services**

(a) **Reimbursement for inpatient hospital services.** Reimbursement for inpatient hospital services is made based on a prospective per diem level of care payment system. The per diem includes all non-physician services furnished either directly or under arrangements. This does not include reimbursement for services in Residential Psychiatric Treatment Facilities.

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(1) **Components.** There are three distinct payment components under this system. Total per diem reimbursement under the new reimbursement system will equal the sum of ~~three~~ two rate components:

- (A) Level of care per diem; plus
- (B) Fixed capital per diem; ~~plus~~
- ~~(C) Direct medical education per diem (if applicable).~~

(2) **Level of care per diem rates.** The level of care per diem rate is payment for operating costs and movable capital costs. Hospitals with actual costs above the statewide median level of care will be limited to reimbursement of the statewide median level of care rate. The median was calculated by level of care using FY 1988 base year operating and moveable capital costs trended forward to the beginning of the third quarter FY 1991. Beginning July 1, 1993, when a hospital's actual costs are less than the statewide median level of care, 25 percent of the difference between the statewide median level of care rate and the hospital's specific level of care cost will be added to the level of care rate.

(A) **Level of care.** The only level of care is psychiatric care (Level 6). The range of primary diagnosis codes is 290 through 316.

(B) **Adjustments.** Level of care per diem rates will be reviewed periodically and adjusted as necessary through a public process.

(3) **Fixed capital per diem.**

(A) **Fixed capital per diem methodology for freestanding psychiatric hospitals.** Inpatient psychiatric hospitals fixed rate capital cost will be reimbursed using the average fixed capital cost of all Medicaid enrolled freestanding psychiatric inpatient hospitals from calendar year 1991 cost reports.

(B) **Adjustments.** The statewide fixed capital per diem average of all freestanding psychiatric hospitals will be reviewed periodically and adjusted as necessary through a public process.

~~(4) **Medical education per diem.** The third rate component, a direct medical education per diem, is paid to those hospitals with direct medical education costs. New hospitals must have 12 full months of cost report data in order to receive a hospital specific direct medical education per diem. The medical education per diem will be reviewed periodically and adjusted as necessary through a public process.~~

(54) **Disproportionate share hospitals (DSH).**

(A) **Eligibility.** A hospital shall be deemed a disproportionate share hospital, as defined by Section 1923 of the federal Social Security Act, if the hospital's Medicaid inpatient utilization rate is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state or if the hospital's low-income utilization rate exceeds 25%.

(i) Eligibility for disproportionate share hospital payments will be determined annually by the OHCA before the beginning of each federal

fiscal year based on cost and revenue survey data completed by the hospitals. The survey must be received by OHCA each year by April 30. The information used to complete the survey must be extracted from the hospital's financial records and fiscal year cost report ending in the most recently completed calendar year, for entities that meet the Medicare Provider designation (refer to Medicare Program Memorandum No. A-96-7 for requirements). A hospital may not include costs or revenues on the survey which are attributable to services rendered in a separately licensed/certified entity. Hospitals found to be ineligible for disproportionate share status upon audit shall be required to reimburse the Authority for any disproportionate share payment adjustments paid for the period of ineligibility.

(ii) Beyond meeting either of the tests found in (i) of this subparagraph, there are three additional requirements which are:

(I) Any hospital offering non-emergency obstetrical services must have at least two obstetricians with staff privileges who have agreed to provide services to Medicaid beneficiaries. This requirement does not apply to children's hospitals.

(II) In the case of an urban hospital, a hospital located in an MSA, an "obstetrician" is defined as any board-certified obstetrician with staff privileges who performs non-emergency obstetrical services at the hospital. In the case of a rural hospital, an "obstetrician" is defined to include any physician with staff privileges who performs non-emergency obstetrical services at the hospital.

(III) A hospital must have a Medicaid inpatient utilization rate of at least one percent.

(B) **Payment adjustment.**

(i) Beginning federal fiscal year 1993 and each year thereafter, DSH payment adjustments will be capped by the federal government. Financial participation from the federal government will not be allowed for expenditures exceeding the capped amount. Eligible DSH hospitals will be assigned to one of the three following categories:

(I) public-private acute care teaching hospital which has 150 or more full-time equivalent residents enrolled in approved teaching programs (using the most recently completed annual cost report) and is licensed in the state of Oklahoma. Public-private hospital is a former state operated hospital that has entered into a joint operating agreement with a private hospital system;

(II) other state hospitals; or

(III) private hospitals and all out-of-state hospitals.

(ii) Payment adjustments will be made on a quarterly basis for federal fiscal year 1994 and thereafter using the following formula that determines the hospital's annual allocation:

(I) Step 1. The Medicaid revenue and imputed revenue for charity are totaled for each hospital qualifying for disproportionate share adjustments.

(II) Step 2. A weight is assigned to each qualifying hospital by dividing each hospital's revenue total (Medicaid and charity) by the revenue total of the public-private acute care teaching hospital, which has the assigned weight of 1.0.

(III) Step 3. A weighted value is then determined for each hospital by multiplying the hospital's assigned weight by the hospital's total Medicaid and charity revenue.

(IV) Step 4. The weighted values of all hospitals qualifying for disproportionate share adjustments are totaled.

(V) Step 5. The percentage of the public-private acute care teaching hospital's weighted value is determined in relation to the weighted values of all qualifying disproportionate share hospitals.

(VI) Step 6. The weighted values of all state hospitals (except public-private acute care teaching hospital) are totaled.

(VII) Step 7. The weighted values of all private and out-of-state hospitals qualifying for disproportionate share adjustments are totaled.

(VIII) Step 8. The percentage of the total weighted values of the hospitals included in Step 6 (State hospitals except public-private acute care teaching hospital) is calculated in relation to the total weighted values (sum of Step 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.

(IX) Step 9. The percentage of weighted values of the hospitals included in Step 7 (private hospitals and all out-of-state hospitals) is calculated in relation to the total weighted values (sum of Steps 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.

(X) Step 10. The weighted percentages for the three hospital groups are next applied to the capped disproportionate share amount allowed by HCFA for the federal fiscal year. The amount of disproportionate share to be paid to the public-private acute care teaching hospital is determined by multiplying the state disproportionate share allotment by the weighted percentage of the public-private acute care teaching hospital. Beginning FFY 96, the weighted percentage amount to be paid will

not exceed 82.82%. Payment of disproportionate share funds to public/private hospitals will be made to the public entity that is organizationally responsible for indigent care. The weighted percentage amount is then subtracted from the state disproportionate share allotment. Once the public-private acute care teaching hospital's share of the state disproportionate share allotment has been subtracted, the state hospitals' weighted percentage is applied to the remainder. Beginning FFY 96, the State hospital's weighted percentage (from VIII of this subunit) will not be less than 75.3%. The balance of the disproportionate share allotment is distributed to private hospitals and all out-of-state hospitals. Distribution of funds within each group will be made according to the relationship of each hospital's weighted value to the total weighted value of the group.

(iii) Payment adjustments to individual hospitals will be limited to 100 percent of the hospital's costs of providing services (inpatient and outpatient) to Medicaid recipients and the uninsured, net of payments received from Medicaid (other than DSH) and uninsured patients.

**(65) Out-of-state hospitals.**

(A) Out-of-state hospitals, for which the Authority has on file a fiscal year 1989 or more recent cost report, shall be reimbursed ~~in the same manner as in-state Oklahoma hospitals~~ as follows:

- (i) the level of care per diem rate
- (ii) a fixed capital per diem
- (iii) a hospital-specific per diem direct medical education rate.

(B) Hospitals, for which the Authority does not have a fiscal year 1989 or more recent cost report on file, will also receive the level of care per diem rates; however, capital and direct medical education rate components will not be reimbursed on a hospital-specific basis. Instead, these hospitals shall receive the statewide median capital per diem amount. The statewide median direct medical education per diem rate will be paid to qualifying hospitals.

(b) **Reimbursement for residential psychiatric treatment facilities.** Effective July 1, 1998, reimbursement for residential psychiatric treatment facilities is at a state-wide per diem system according to the facility category. There are two distinct payment components under this system. Total per diem reimbursement will equal a statewide median per diem operating and movable capital amount plus a statewide median per diem fixed capital amount.

(1) **In-State facilities.** The rates were calculated using peer grouped residential treatment facility 1989 or 1990 audited cost reports. Costs were inflated to a common point in time prior to calculation of the median cost per day.

**(A) Hospital Based and Freestanding.**

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(i) **Accreditation.** Hospital-Based and Free-standing facilities must be fully accredited by JCAHO, ~~or AOA,~~ or CARF as a psychiatric facility or program and be licensed as a residential child care facility.

(ii) **Reimbursement.** The reimbursement rate is an all-inclusive per diem. The facility must furnish, either directly or under arrangements, all non-physician services, including prescribed drugs.

(B) **Community Based.**

(i) **Accreditation.** Community based facilities must be fully accredited by JCAHO, ~~or AOA,~~ or CARF as a psychiatric facility or program and licensed as a child placing agency.

(ii) **Reimbursement.** Payment shall be for routine per diem services, exclusive of ancillary and physician services. Ancillary and physician services are reimbursed separately on a fee for service basis.

(2) **Out-of-state Out-of-state facilities.**

(A) **Accreditation.** Out-of-state facilities must be fully accredited by JCAHO, ~~or AOA,~~ or CARF as a psychiatric facility or program and be appropriately state licensed.

(B) **Reimbursement.** Facilities shall be reimbursed in the same manner as in-state residential psychiatric treatment centers. In the event comparable services cannot be purchased from an Oklahoma facility and the current payment levels are insufficient to obtain access for the recipient, OHCA may negotiate an all-inclusive per diem rate.

### PART 7. CERTIFIED LABORATORIES

**317:30-5-104. Individuals eligible for Part B of Medicare**

Payment is made ~~for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services, which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.~~

### PART 9. LONG TERM CARE FACILITIES

**317:30-5-122. Levels of care**

The level of care provided by a long term care facility to a patient is based on the nature of the health problem requiring care and the degree of involvement in nursing services/care needed from personnel qualified to give this care.

(1) **Skilled Nursing facility.** Payment is made at 50% of the ~~for~~ Part A coinsurance ~~only~~ for Medicare covered skilled nursing facility care for dually eligible, categorically needy individuals ~~and Qualified Medicare Beneficiaries (QMB).~~

(2) **Nursing Facility.** Care provided by a nursing facility to patients who require professional nursing supervision and a maximum amount of nonprofessional nursing care due to physical conditions or a combination of physical and mental conditions.

(3) **Intermediate Care Facility for the Mentally Retarded.** Care provided by a nursing facility to patients who require care and active treatment due to mental retardation or developmental disability combined with one or more handicaps. The mental retardation or developmental disability must have originated during the patient's developmental years (prior to 22 years of chronological age).

### PART 17. MEDICAL SUPPLIERS

**317:30-5-214. Coverage for individuals eligible for Part B of Medicare**

Payment is made to medical suppliers ~~for 94 percent of the deductible and 75 percent of the coinsurance on Medicare covered services which is an all inclusive payment for all assigned claims~~ utilizing the Medicaid allowable for comparable services.

### PART 19. NURSE MIDWIVES

**317:30-5-226. Coverage by category**

(a) **Adults.** Payment is made for nurse midwife services including management of normal care of the mother and newborn(s) throughout the maternity cycle.

(1) The county DHS office where the mother resides must be notified in writing within five days of the child's birth in order for an individual person code to be assigned to the newborn. A claim may then be filed for charges for the baby under the case number and the baby's name and assigned person code.

(2) Charges billed on the mother's person code will be denied.

(3) Providers must use DHS Form FSS-NB-1 to notify the county DHS office of the child's birth.

(4) Obstetrical care should be billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery should be used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. Show the date the patient was first seen on the claim form. Payment for total obstetrical care includes all routine care, and any ultrasounds performed by the attending provider. For payment of total OB care, the provider must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the patient leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB provider outside of antepartum visits. The antepartum care during the prenatal care period includes all care by the OB provider except major illness distinctly unrelated to the pregnancy.

(5) It is anticipated, when the Norplant System is the contraceptive of choice, that the client will be counseled regarding the long term nature of this contraceptive system. Removal of the Norplant capsules prior to five years will be covered for medically necessary reasons only. Removal of the Norplant capsules is not covered for the convenience of the client or for purposes of conception. Reinsertion of Norplant contraceptive will be considered on a case by case basis).

(b) **Children.** Payment to nurse midwives for services to children is the same as for adults.

(c) **Individuals eligible for Part B of Medicare.** Payment is made ~~to nurse midwives for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services, which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.~~

### PART 23. PODIATRISTS

#### 317:30-5-261. Coverage by category

Payment is made to podiatrists as set forth in this Section:

(1) **Adults.** Payment is made for medically necessary surgical procedures, ~~x-rays~~ x-rays, and outpatient visits. Procedures which are generally considered as preventative foot care, i.e. cutting or removal of corns, warts, callouses, or nails, are not covered unless the diagnoses on the claim, i.e. diabetes, multiple sclerosis, cerebral vascular accident, peripheral vascular disease establishes the medical necessity for the service. The patient must be under the active care of a doctor of medicine or osteopathy who documents the condition. All services must be medically appropriate and related to systemic disease for which foot care is viewed as preventative in nature. Nursing home visits must be ordered by the attending physician. The nursing home record must contain appropriate documentation that the visit was not performed for screening purposes. A specific foot ailment, symptom or complaint must be documented. In instances where the examination is performed in response to specific symptoms or complaints which suggests the need for care, the visit is compensable regardless of the resulting diagnosis. All outpatient visits are subject to existing visit limitations.

(2) **Children.** Coverage of podiatric services for children is the same as for adults. Refer to OAC 317:30-3-57(a) (20) for additional coverage under the Early and Periodic Screening, Diagnosis and Treatment Program.

(3) **Individuals eligible for Part B of Medicare.** Payment for podiatric services is made ~~for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services, which is an all inclusive payment for all assigned claims~~ utilizing the Medicaid allowable for comparable services.

### PART 25. PSYCHOLOGISTS

#### 317:30-5-276. Coverage by category

Payment is made to psychologists with a license to practice in the state where the service is performed or to practitioners who have completed education requirements and are under current board approved supervision to become licensed, as set forth in this section.

(1) **Adults.** There is no coverage for adults for services by a psychologist.

(2) **Children.** Coverage for children includes the following:

(A) Individual psychotherapy in an outpatient setting including an office or clinic. The services may be performed at the residence of the recipient if it is demonstrated that it is clinically beneficial, or if the client is unable to go to a clinic or office. Individual psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It is a service personally rendered to an individual by a licensed psychologist.

(B) Family Therapy is performed in an outpatient setting limited to an office, clinic, or client residence. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of a Medicaid eligible child as a specifically identified component of an individual treatment plan.

(C) Group therapy in an outpatient setting must be performed in the psychologists' office or clinic. Group therapy is a face to face interaction between a therapist and two or more unrelated patients to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is eight patients. Group therapy must be provided for the benefit of a Medicaid eligible child four years of age or older as a specifically identified component of an individual treatment plan. Group therapy is billed per session. No more than one per patient session is allowed per day.

(D) Psychological testing is limited to four hours of testing per patient over the age of two each 12 months. In exceptional circumstances where it is determined that further testing is medically necessary, additional hours may be prior authorized by the OHCA or designated agent. Any testing performed for a child under three must be prior authorized.

(E) Payment for therapy services provided by a psychologist is limited to four encounters per month. An encounter is defined as one hour of individual therapy, one hour of family therapy, or one group therapy session. The four encounters can be any combination of the treatment options. Any services which exceed these limitations must be prior authorized by the Oklahoma Health Care Authority or designated agent. A child receiving Residential Behavioral Management in a foster home, also known as therapeutic

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foster care, or a child receiving Residential Behavioral management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or psychological testing unless prior authorized by the OHCA or its designated agent.

(3) **Home and Community Based Waiver Services for the Mentally Retarded.** All providers participating in the Home and Community Based Waiver Services for the mentally retarded program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

(4) ~~Vocational rehabilitation.~~ Coverage for vocational rehabilitation is limited to those services authorized by the patient's counselor.

(54) **Individuals eligible for Part B of Medicare.** Payment is made for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare Covered Services, which is an all-inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.

### PART 27. REGISTERED PHYSICAL THERAPISTS

#### 317:30-5-291. Coverage by category

Payment is made to registered physical therapist's as set forth in this Section

(1) **Children.** Coverage for children is as authorized.

(2) **Adults.** There is no coverage for adults.

(3) ~~Vocational rehabilitation.~~ Coverage for vocational rehabilitation is as authorized by the patient's counselor.

(43) **Individuals eligible for Part B of Medicare.** Payment is made for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services, which is an all-inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.

### PART 29. RENAL DIALYSIS FACILITIES

#### 317:30-5-306. Coverage by category

Payment is made to renal dialysis facilities as set forth in this Section.

(1) **Adults.** Payment is made for outpatient renal dialysis for adults at the composite rate.

(2) **Children.** Coverage for children is the same as for adults.

(3) ~~Vocational rehabilitation.~~ Payment is made for vocational rehabilitation as authorized by the patient's counselor

(43) **Individuals eligible for Part B of Medicare.** Payment is made for 94 percent of the deductible and 75 percent of the coinsurance on Medicare eligible individuals utilizing the Medicaid allowable for comparable service.

### PART 33. TRANSPORTATION BY AMBULANCE

#### 317:30-5-339. Individuals eligible for Part B of Medicare

Payment for ambulance transportation is made for 94 percent of the deductible and 75 percent of the coinsurance on Medicare covered services which is an all-inclusive payment on assigned claims utilizing the Medicaid allowable for comparable services.

### PART 35. RURAL HEALTH CLINICS

#### 317:30-5-359. Claims for Medicare eligible recipients

Payment is made to rural health clinics for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services which is an all-inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.

### PART 37. ADVANCED PRACTICE NURSE

#### 317:30-5-376. Coverage by category

Payment is made to Advanced Practice Nurse as set forth in this Section.

(1) **Adults.** Payment for adults is made for primary care health services, within the scope of practice of Advanced Practice Nurse and within the scope of the Oklahoma Health Care Authority medical programs.

(2) **Children.** Payment for children is made for primary care health services, within the scope of practice of Advanced Practice Nurse, to children and adolescents under 21 years of age including EPSDT screening services and within the scope of the Oklahoma Health Care Authority medical programs.

(A) Payment is made to eligible providers for Early and Periodic Screening, Diagnosis and Treatment of individuals under age 21.

(B) The EPSDT program is a comprehensive child health program, designed for ensuring the availability of and access to required health care resources and helping parents and guardians of Medicaid eligible children effectively use these resources. The receipt of an identified EPSDT screening makes the Medicaid-eligible child eligible for necessary follow-up medical care.

(C) The Oklahoma Medicaid Program adopted the recommendations of the American Academy of Pediatrics which includes at least the following:

- (i) six screenings during the first year of life;
- (ii) two screenings in the second year;
- (iii) one screening yearly for ages 2 thru 5 years; and
- (iv) one screening every other year for ages 6 thru 20 years.

(D) Comprehensive screening examinations are to be performed by a provider qualified under State law to furnish primary health care services.

(3) **Individuals eligible for Part B of Medicare.** Payment is made for 94 percent of the deductible and 75 percent of the coinsurance on Medicare covered services which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.

PART 45. OPTOMETRISTS

317:30-5-431. Coverage by category

Payment is made to optometrists as set forth in this Section.

(1) **Adults.** Payment can be made for medical services that are reasonable and necessary for the diagnosis and treatment of illness or injury up to the patient's maximum number of allowed office visits per month.

(A) Payment is made for treatment of eye disease not related to refractive errors. There is no provision for routine exams, treatment of refractive errors, lenses, frames, eye examinations for the purpose of prescribing glasses or for the purchase of visual aids.

(B) In cataract participatory surgery, separate payment can be made to the optometrist for postoperative care. Payment for postoperative care will be made at 20% of the surgical allowable. Postoperative care for cataract surgery should be filed using appropriate CPT codes, modifiers and guidelines. The surgeon's name must be present on the claim in the referring physician's block or payment will be denied.

(C) Payment for laser surgery to optometrist is limited to those optometrists certified by the Board of Optometry as eligible to perform laser surgery.

(2) **Children.**

(A) Payment can be made for medical services that are reasonable and necessary for the diagnosis and treatment of illness, injury, amblyopia and significant refractive errors or strabismus.

(B) Within the scope of the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT), payment will be made for periodic visual screenings as set forth in the periodicity schedule adopted by the Oklahoma Health Care Authority (OHCA) in accordance with the American Academy of Pediatrics. Payment will be made for lenses and frames required to correct visual defects or to protect children with monocular vision. In addition to periodic visual screenings, payment will be made for inter periodic visual screenings when medically necessary.

(3) **Individuals eligible for Part B of Medicare.** Payment is made at the rate of 94 percent of the deductible and 75 percent of the coinsurance due on Medicare services which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.

PART 47. OPTICAL COMPANIES

317:30-5-451. Coverage by category

Payment is made to optical suppliers as set forth in this Section.

(1) **Adults.** There is no provision for the coverage of glasses for adults, or for the purchase of visual aids.

(2) **Children.** Payment will be made for lenses and frames required to correct visual defects or to protect children with monocular vision.

(3) **Individuals eligible for Part B of Medicare.** Payment is made at the rate of 94 percent of the deductible and 75 percent of the coinsurance due on Medicare services which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.

PART 49. FAMILY PLANNING CENTERS

317:30-5-466. Coverage by category

Payment is made to family planning centers as set forth in this Section.

(1) **Adults.** Payment is made for adults on an encounter basis. Each encounter is all inclusive of the following and payment includes all services provided:

(A) **Initial examination services.** Initial examination services that are provided to new family planning patients include:

(i) Complete physical examination including assessment of height, weight, blood pressure, thyroid, extremities, heart, lungs, breasts, abdomen, pelvic examination, including visualization of the cervix, external genitalia, bimanual exam, and rectal exam as indicated. (Male clients receive examination of genitals and rectum including palpation of the prostate in lieu of pelvic exam given females.)

(ii) Complete general history of patient and pertinent history of immediate family members. This general history addresses allergies, immunizations, past illnesses, hospitalizations, surgery, review of systems, use of alcohol, tobacco and drugs. Reproductive function history in female patients includes menstrual history, sexual activity, sexually transmitted diseases, contraceptive use, pregnancies, and in utero exposure to DES. Male reproductive general history includes sexual activity, sexually transmitted diseases, fertility, and exposure to DES.

(iii) Laboratory services to include hematocrit, dip stick urinalysis, pap smear, gonorrhea culture, serologic test for syphilis and rubella screening if indicated.

(iv) Education and counseling are offered to provide information regarding reproductive anatomy, range of clinic services, risks benefits and side effects of various methods of contraception, and health promotion/disease prevention topics as needed.

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- (v) Provision for an annual supply of chosen contraceptive method to include, but not limited to, injections (administration and medication), oral contraceptive, IUD, diaphragm, foam, condoms or natural family planning.
  - (vi) Treatment of minor gynecological problems, infections, and other conditions.
  - (vii) Referral to appropriate providers for problems or conditions which are beyond the scope of the clinic to treat.
- (B) **Annual examination services.** Annual examination services are provided to continuing patients to include:
- (i) Annual update physical examination to include height, weight, blood pressure, extremities, and examination of breasts and pelvic organs. If required, a complete physical examination may be provided as described under the initial visit services above.
  - (ii) A medical history update is taken to update the general history and includes noting the patient's adaptation to and correct use of contraceptive method, menstrual history, specific warning signs and other side effects related to the contraceptive method. If indicated, a complete general history of the patient will be taken at the annual visit.
  - (iii) Laboratory services to include pap smear, gonorrhea culture, hematocrit, and serologic test for syphilis.
  - (iv) Education and counseling regarding specific problems, risks and side effects of the method in use.
  - (v) Provision for an annual supply of chosen contraceptive method to include, but not limited to, injections (administration and medication), oral contraceptive, IUD, diaphragm, foam, condoms or natural family planning.
  - (vi) Treatment of minor gynecological problems, infections, and other conditions.
  - (vii) Referral to appropriate providers for problems or conditions which are beyond the scope of the clinic to treat.
- (C) **Encounter visits.**
- (i) Encounter visits covers services provided to patients which are not part of the initial/annual examinations. This may include:
    - (I) A follow-up visit for all new patients to insure they understand and are experiencing no problems with their particular contraceptive method.
    - (II) A scheduled revisit for a new or continuing patient who may have conditions which places the patient in a high risk category requiring more intensive medical management as outlined in the program medical protocol.
  - (ii) Encounter visits may also be scheduled at the request of the patient as they are encouraged

to return to the clinic at any time they experience difficulty with a particular contraceptive method or have concerns related to their reproductive health. Pregnancy diagnosis and counseling services are also provided under this category.

(D) **Vasectomy.** For vasectomies, payment will be made as an all-inclusive rate for all services provided in connection with the surgery. Claims must have the Federally mandated consent form properly completed and attached.

(E) **Tubal ligations.** For tubal ligations, payment will be made as an all-inclusive rate for the cost of the surgeon, anesthesiologist, pre and post-operative care and outpatient surgery facility. Claims must have the properly completed Federally mandated consent form attached.

(F) **Norplant system kit.** This is a levonorgestrel implant that is used as a long-term reversible contraceptive method that provides continuous contraception for as long as five years.

- (i) The Levonorgestrel implant of Norplant system is a minor in-office surgical procedure for implanting the Norplant System consisting of six flexible capsules.

- (ii) Removal of the Levonorgestrel Norplant System is a minor in-office surgical procedure for the removal of the Norplant System.

(2) **Children.** Payment is made for children as set forth for adults. However payment cannot be made for the sterilization of persons under the age of 21.

(3) **Individuals eligible for Part B of Medicare.** Payment is made for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services, which is an all-inclusive rate of payment for all assigned claims utilizing the Medicaid allowable for comparable services. Claims for services which are not covered by Medicare should be filed directly with the Fiscal Agent for payment within the scope of the program.

## PART 61. HOME HEALTH AGENCIES

### 317:30-5-546. Coverage by category

Payment is made for home health services as set forth in this Section.

(1) **Adults.** Payment is made for home health services provided in the patient's residence to all categorically needy individuals. Coverage for adults is as follows.

(A) **Covered items.**

- (i) Part-time or intermittent nursing services;
- (ii) Home health aide services;
- (iii) Standard medical supplies;
- (iv) Durable medical equipment (DME) and appliances; and
- (v) Items classified as prosthetic devices.

(B) **Non-covered items.** The following are not covered:

- (i) Sales tax;

- (ii) Enteral therapy and nutritional supplies;
  - (iii) Electro-spinal orthosis system (ESO); and
  - (iv) Physical therapy, occupational therapy, speech pathology, or audiological services.
- (2) **Children.** Home Health Services are covered for persons under age 21.
- (3) **Individuals eligible for Part B of Medicare.** Payment is made for ~~94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.~~

**PART 63. AMBULATORY SURGICAL CENTERS**

**317:30-5-567. Coverage by category**

Payment is made for ambulatory surgical center services as set forth in this Section.

- (1) **Children.** Payment is made for children for medically necessary surgical procedures which are included on the List of Covered Surgical Procedures.
- (2) **Adults.** Payment is made for adults for medically necessary surgical procedures which are included on the List of Covered Surgical Procedures.
- (3) **Individuals eligible For Part B of Medicare.** Payment is made for ~~94 percent of the deductible and 75 percent of the co insurance due on Medicare covered services, which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.~~

**PART 69. CERTIFIED REGISTERED NURSE ANESTHETISTS**

**317:30-5-606. Coverage by category**

Payment is made to certified registered nurse anesthetists as set forth in this Section.

- (1) **Adults.** Payment is made for the administration of anesthesia to adults within the scope of the Authority's medical programs, provided the services are reasonable and necessary for the treatment of illness or injury, or to improve the functioning of a malformed body member.
- (2) **Children.** Coverage for children is the same as for adults.
- (3) **Individuals eligible for Part B of Medicare.** Payment is made for ~~94 percent of the deductible and 75 percent of the coinsurance on Medicare covered services, which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.~~

**PART 75. FEDERALLY QUALIFIED HEALTH CENTERS**

**317:30-5-661. Coverage by category**

(a) **Payment.** Payment will be made to FQHCs for services which meet the definition of core services as specified

in Section 1905(1)(2) of the Social Security Act and for other ambulatory services covered under Oklahoma's Title XIX state plan. Payment is made to federally qualified health centers as set forth in this Section.

(1) **Adults.** Payment will be made on an encounter basis for medical services. An encounter is all medical services provided by the FQHC for an eligible recipient in one day.

(A) **Core services.** The following core services are covered for adults 21 years of age and older:

- (i) physician services;
- (ii) services and supplies incidental to physician services (including drugs and biologicals that cannot be self administered);
- (iii) pneumococcal vaccine and its administration and influenza vaccine and its administration;
- (iv) physician assistant services;
- (v) advanced practice nurse services;
- (vi) clinical social worker services;
- (vii) services and supplies incidental to clinical psychologist and clinical social worker services as would otherwise be covered if furnished by or incidental to physician services;
- (viii) in the case of those FQHC's that are located in an area that has a shortage of home health agencies, part-time or intermittent nursing care and related medical supplies to a homebound individual;

(B) **Ambulatory services.** Other ambulatory services include but are not limited to the following services which are Title XIX-payable, covered under Oklahoma's State Plan and offered by the FQHC. The same limitations on services set out in the State Plan are applicable to other ambulatory services.

- (i) podiatrist services;
- (ii) optometrist services;
- (iii) dental services for persons under age 21;
- (iv) prescribed drugs;
- (v) prosthetic devices;
- (vi) eyeglasses for persons under age 21;
- (vii) transportation;
- (viii) durable medical equipment;
- (ix) technical component of diagnostic tests such as x-rays and EKGs
- (x) specialized laboratory tests

(2) **Children.** Coverage is the same as for adults given in paragraph (1) of this Section except as follows. Payment will be made on a separate encounter basis for medical or dental services. Refer to Subchapter 1, General Provisions, OAC 317:30-3-51 for exceptions to the visit limit for children under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program.

(3) **Individuals eligible for Part B of Medicare.** Payment is made for ~~94% of the deductible and 75% of the coinsurance on Medicare covered services which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.~~

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(b) **Record keeping.** Adequate records must be kept to show what services were provided in the encounter claimed.

(c) **Cost reporting.** All FQHC's requesting Medicaid reimbursement must complete a free standing Federally Funded Health Center Worksheet (HCFA-242) as modified by OHCA to accommodate all allowable costs for Medicaid purposes. OHCA will contract for an independent audit of each FQHC's cost report.

### PART 79. DENTISTS

#### 317:30-5-696. Coverage by category

Payment is made for dental services as set forth in this Section.

(1) **Adults.** Dental coverage for adults is limited to emergency extractions. Payment will be made for dental care for adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care, similar to the scope of services available to persons under age 21. Payment is also made for medical and surgical services performed by a dentist, to the extent such services may be performed under State law either by a doctor of dental surgery or dental medicine, when those services would be covered if performed by a physician. Payment is made to Dentists, who have successfully completed an accredited/approved residency program in anesthesiology, for the administration of anesthetic agents.

(A) **Procedure codes.** The anesthesiologist is responsible for entering the correct anesthesia procedure code on the appropriate claim form. Anesthesia codes from the Physicians' Current Procedural Terminology should be used. Payment is made only for the major procedure during an operative session.

(B) **Modifiers.** All anesthesia procedure codes must have a modifier. Without the modifier, the claim will be denied. Payment rate is 100% of the OHCA allowable.

(C) **Qualifying circumstances.** Certain codes in the Medicine section of the CPT are used to identify extraordinary anesthesia services. The appropriate modifiers should be added to these codes. Additional payment can be made for extremes of age, total body hypothermia and controlled hypotension.

(D) **Hypothermia.** Hypothermia total body or regional is not covered unless medical necessity is documented and approved through review by the Authority's Medical Consultants.

(E) **Anesthesia with Blood Gas Analysis.** Blood gas analysis is part of anesthesia service. Payment for anesthesia includes payment for blood gas analysis.

(F) **Steroid injections.** Steroid injections administered by an anesthesiologist are covered as nerve block.

(G) **Epidural anesthesia.** Continuous epidural analgesia for labor and cesarean section or vaginal delivery is covered. Payment for these codes will

include consideration for placement when associated with the anesthesia procedure.

(H) **Stand by anesthesia.** Stand by anesthesia is not covered unless the physician is actually in the operating room administering medication, etc. If this is indicated, claim will be processed as if anesthesia was given. Use appropriate anesthesia code.

(I) **Other qualifying circumstances.** All other qualifying circumstances, i.e., physical status, emergency, etc. have been structured into the total allowable for the procedure.

(J) **Central venous catheter and anesthesia.** Payment for placement of central venous catheter, injection of anesthesia substance or similar procedures will be made only when the procedure is distinctly separate from the anesthesia procedure.

(2) **Home and community based waiver services for the mentally retarded (HCBWS).** All providers participating in the HCBWS must have a separate contract with this Authority to provide services under the HCBWS. All services are prior authorized.

(3) **Children.** The following services are compensable for eligible persons under 21 years of age without prior authorization. ALL OTHER DENTAL SERVICES FOR PERSONS UNDER 21 YEARS OF AGE AND ELIGIBLE ADULTS RESIDING IN PRIVATE ICF/MR'S MUST BE PRIOR AUTHORIZED. Anesthesia services are covered for children in the same manner as adults.

(A) Examination. Two dental examinations, two prophylaxis with/without topical fluoride treatment, and two bitewing x-rays once each twelve month period regardless of the number of dentists involved.

(B) Oral hygiene instructions. The dentist or registered dental hygienist shall instruct the patient or the responsible adult, if the child is under five years of age, in proper tooth brushing and flossing by actual demonstration. Verbal and/or written proper diet information should be discussed. This service shall include a new tooth brush and a small container of six or more yards of dental floss dispensed to the patient. This service is limited to once per 12 months.

(C) Application of dental sealants. (A.D.A. certified materials). All teeth must be caries free on all surfaces to be eligible for this service.

(D) Emergency examinations. This procedure will not be allowed within two months of a periodic oral examination, same provider, same client.

(E) Emergency extractions. For the relief of pain or treatment of acute infection.

(F) Injectable antibiotics.

(G) Composite restorations in vital or successfully treated non-vital permanent anterior teeth. Composite restorations in vital primary incisors; tooth numbers O and P to age 4.0 years, numbers E and F to age 5.0 years, numbers N and Q to 5.0 years, and numbers D and G to 6.0 years.

(H) Amalgam or composite restorations in posterior, vital permanent teeth. Amalgam or composite

restoration in vital posterior primary teeth with 70 percent or more root structure remaining or more than 12 months prior to normal exfoliation.

(I) Chrome steel crowns. Applies to all primary teeth when the child is five years or less and 70 percent or more of the root structure remains, or when the tooth would not exfoliate within the next 12 months. This applies to teeth with pulpotomies or pulpectomies if the above conditions exist, permanent teeth where more than three surfaces of decay exists or where cuspal occlusion is lost due to decay or accident. Chrome steel crowns are the treatment of choice for the above conditions on permanent teeth unless they are abutment teeth for fixed or removable prosthetics prior to age 16.0 years. Pre-operative periapical x-rays must be available for review, if requested.

(J) Pulpotomies. All primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation; primary incisor teeth numbers O and P before age 4.0 years; numbers E and F before 5.0 years; numbers N and Q before 5.0 years; and numbers D and G before 6.0 years, with the 70 percent root structure rule applied. Pre and post-operative periapical x-rays must be available for review, if requested.

(K) Pulpectomies. All primary teeth having 70 percent or more root structure remaining or at least 12 months before normal exfoliation. Pre and post-operative periapical x-rays must be available for review, if requested.

(L) Anterior root canals. Permanent teeth numbers 6, 7, 8, 9, 10, 11, and 22, 23, 24, 25, 26, 27, where there are no other missing teeth in the same arch requiring replacement, unless numbers 6, 11, 22, or 27 are abutments for a prosthesis. Accepted A.D.A. filling materials must be used. Materials such as N-2 or similar formulas are not acceptable. Pre and post-operative periapical x-rays must be available for review, if requested.

(M) Space maintainers.

(i) Band and loop type space maintenance of all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge or where the successor tooth would not normally erupt in the next 12 months. First primary molars will not be allowed space maintenance after age 8 years if the second primary and first permanent molars are present and in cuspal interlocking occlusion whether normal relationship is or is not present. If there are missing teeth bilaterally in the same arch, under the above guidelines, lingual arch is the treatment of choice. The teeth numbers shown on the claim should be that of the missing teeth. Post-operative bitewing x-rays must be available for review.

(ii) Lingual arch bar is to be used where multiple missing teeth exist in the same arch. The requirements are the same as for band and loop space maintainer. Multiple missing upper anterior primary incisors may be replaced with the appliance to age 5.0 years to prevent abnormal swallowing habits. Post-operative bitewing x-rays must be available. Anterior saddle and pontics may be added to this appliance to replace teeth D, E, F, and G to age 5.0 years. See code number attachment (prosthetic section) for proper code number for primary anterior teeth. Saddle (includes up to 4 teeth or pontics) is further described under services requiring prior authorization, #g.

(iii) Acrylic flippers are to be used for single or multiple anterior permanent tooth replacement to age 18.0 years.

(N) Cement base. To be used where pulp cap, pulpotomy or pulpectomy is not necessary. Cement bases are for very deep restorations requiring thermal shock protection for the pulpal tissues. Cement bases are not cavity liners such as cavitec, CAO, or similar quick set products. Acceptable cement bases are IRM, zinc oxide and eugenol, glass ionomers, or crown and bridge cements. These are indirect pulp caps. Pre-operative radiographs must be available for review, if requested.

(O) Pulp caps (direct). A.D.A. accepted CAO containing materials.

(P) Sedative treatment. Temporary restoration must be ADA acceptable materials. This restoration is used for very deep cavities to prevent doing a pulpotomy, pulpectomy or root canal. This restoration, when properly used, includes direct or indirect pulp cap. This is the only restoration allowed per tooth per day. Subsequent restoration of the tooth is allowed after 30 days.

(Q) History and physical. For the purpose of admitting a patient to a hospital for dental treatment.

(4) **Individuals eligible for Part B of Medicare.**

(A) Payment is made for ~~94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services~~ utilizing the Medicaid allowable for comparable services. This is an all inclusive payment on assigned claims.

(B) Services which have been denied by Medicare as noncompensable should be filed directly with this Authority with a copy of the Medicare EOB attached.

**PART 81. CHIROPRACTORS**

**317:30-5-721. Coverage by category**

Payment is made to chiropractors as set forth in this Section.

- (1) **Children.** There is no coverage for children.
- (2) **Adults.** There is no coverage for adults.

~~(3) Vocational rehabilitation. Coverage for vocational rehabilitation is as authorized by the patient's counselor.~~

~~(4) Individuals eligible for Part B of Medicare. Payment is made for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services utilizing the Medicaid allowable for comparable services.~~

## PART 89. RADIOLOGICAL MAMMOGRAPHER

### 317:30-5-903. Individuals eligible for Part B of Medicare

~~Payment is made for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare covered services, which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.~~

## PART 108. NUTRITION SERVICES

### 317:30-5-1076. Coverage by category

Payment is made for Nutritional Services as set forth in this section.

(1) **Adults.** Payment is made for two hours of nutritional counseling per year. All services must be prescribed by a physician and be face to face encounters between the dietitian and the client. Services must be expressly for diagnosing, treating or preventing, or minimizing the effects of illness. Nutritional services for the treatment of obesity is not covered unless there is documentation that the obesity is a contributing factor in another illness.

(2) **Children.** Coverage for children is the same as adults.

(3) **Home and Community Based Waiver Services for the Mentally Retarded.** All providers participating in the Home and Community Based Waiver Services for the Mentally Retarded program must have a separate contract with OHCA to provide Nutrition Services under this program. All services are specified in the individual's plan of care.

(4) **Individuals eligible for Part B of Medicare.** ~~Payment is made for 94 percent of the deductible and 75 percent of the coinsurance due on Medicare Covered Services, which is an all inclusive payment for all assigned claims utilizing the Medicaid allowable for comparable services.~~ Services which are not covered under Medicare should be billed directly to the Medicaid Agency.

*[OAR Docket #03-659; filed 4-16-03]*

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

*[OAR Docket #03-660]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Individual Providers and Specialties

Part 9. Long Term Care Facilities

317:30-5-131.2 [AMENDED]

Part 41 Family Support Services

317:30-5-412 [AMENDED]

Part 79. Dentists

317:30-5-700.1 [AMENDED]

Part 83. Residential Behavior Management Services in Foster Care Settings

317:30-5-740 [AMENDED]

317:30-5-740.1 [AMENDED]

317:30-5-741 [AMENDED]

317:30-5-742 [AMENDED]

317:30-5-742.1 [AMENDED]

317:30-5-742.2 [AMENDED]

317:30-5-745 [AMENDED]

(Reference APA WF # 02-14, 02-16, 02-18A, and 02-19)

### AUTHORITY:

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; House Bill 2218 of the 2<sup>nd</sup> Session of the 48<sup>th</sup> Legislature; 63 O.S. 2001, Section 1-1925.2; 42 CFR 440.100; Section 5006 of Title 63 of Oklahoma Statutes; Section 1415.1 of Title 10 of Oklahoma Statutes; 42 CFR 440.130(d)

### DATES:

#### Comment period:

December 16, 2002 through January 15, 2003

#### Public hearing:

None held or requested

#### Adoption:

February 13, 2003

#### Submitted to Governor:

February 18, 2003

#### Submitted to House:

February 18, 2003

#### Submitted to Senate:

February 18, 2003

#### Gubernatorial approval:

April 4, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 11, 2003

#### Final adoption:

April 11, 2003

#### Effective:

May 27, 2003

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 9. Long Term Care Facilities

317:30-5-131.2 [AMENDED]

(Reference APA WF # 02-14)

#### Gubernatorial approval:

September 26, 2002

#### Register publication:

20 Ok Reg 160

#### Docket number:

02-1453

#### Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 79. Dentists

317:30-5-700.1 [AMENDED]

(Reference APA WF # 02-16)

**Gubernatorial approval:**

November 25, 2002

**Register publication:**

20 Ok Reg 521

**Docket number:**

03-111

**Superseded rules:**

Subchapter 5. Individual Providers and Specialties

Part 41. Family Support Services

317:30-5-412 [AMENDED]

(Reference APA WF # 02-18A)

**Gubernatorial approval:**

October 8, 2002

**Register publication:**

20 Ok Reg 164

**Docket number:**

02-1454

**Superseded rules:**

Subchapter 5. Individual Providers and Specialties

Part 83. Residential Behavior Management Services in Foster Care

Settings

317:30-5-740 [AMENDED]

317:30-5-740.1 [AMENDED]

317:30-5-741 [AMENDED]

317:30-5-742 [AMENDED]

317:30-5-742.1 [AMENDED]

317:30-5-742.2 [AMENDED]

317:30-5-745 [AMENDED]

(Reference APA WF # 02-19)

**Gubernatorial approval:**

November 25, 2002

**Register publication:**

20 Ok Reg 523

**Docket number:**

03-110

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Medical Providers-Fee for Service, Long Term Care specific, rules are revised to comply with provisions of House Bill 2218 of the 2<sup>nd</sup> Session of the 48<sup>th</sup> Legislature related to the Quality of Care fund. Revisions comply with these Legislative mandates by allowing: (1) the activity and social services staff who do not provide direct care to patients to be included in the direct-care-staff-to resident ratio until September 1, 2003; and (2) the Agency to assess the daily administrative penalty for incomplete or non-timely filed Quality of Care Reports only after written notification from the Agency has been received by the facility. Current rules allow the activity and social services staff who are not providing direct, hands-on care to be included in the direct-care-staff-to-resident ratio in any shift until September 1, 2002. House Bill 2218 allows those individuals to be included in the ratio for an additional year. Existing Quality of Care Report rules allow the Agency to assess an administrative penalty of \$150.00 per calendar day for each day a Medicaid facility's Quality of Care Report is late or incomplete. Provisions of the Legislation delays the Agency from imposing the initial administrative penalty until written notification from the Agency has been received by the facility. Rule revisions are needed in order to comply with provisions of House Bill 2218 of the 2<sup>nd</sup> Session of the 48<sup>th</sup> Legislature related to Quality of Care Reports.

Medical Providers-Fee for Service, Dentists specific, rules are revised to remove the replacement of lost or broken retainers from the global fee for orthodontic treatment. Current rules state that the payment for the banding, wires, and adjustments includes all ancillary services, including the removal or repair of appliances, construction and placing of retainers and the replacement of lost or broken retainers for one set fee. Some currently contracted Medicaid Orthodontists are unwilling to continue to render services to Medicaid patients as they have stated that they are no longer willing to absorb the costs of replacing lost or broken retainers. The Agency is federally mandated to provide adequate access to services for the Medicaid eligible population. Therefore, rule revisions are needed to remove the reimbursement for the replacement of lost or broken retainers from the global fee for orthodontic treatment.

Medical Providers-Fee for Service, Family Support Services specific, rules are revised to clarify transportation service availability in the Home and Community-Based Waivers for persons with developmental disabilities. Rules are being established to clarify conditions under which transportation services must be provided. New rules will distinguish among non-adapted transportation, adapted transportation, and public transportation. Revisions will provide guidelines for determining whether a person needs adapted transportation as well as establishing safer standards for transportation providers. Transportation services that are not covered will be specified. In addition, rules will establish procedures for review and authorization of higher amounts of transportation service. Rule revisions are needed in order to clarify transportation service availability for individuals who receive services through the DDS Home and Community-Based Waivers.

Medical Providers-Fee for Service, Residential Behavior Management Services in Foster Care Settings specific, rules are being revised to implement a more cost effective method of providing specialized services to DHS custody children while maintaining an adequate pool of service providers. Revisions replace group therapy services (minimum of three 30 minute sessions per month) with group rehabilitative treatment services (minimum of two 30 minute sessions per month) and define group rehabilitative treatment services. Group rehabilitative services are more appropriate for the population served in the foster care setting as these services are to help restore the resident's functional level within the community setting. The rule revisions also establish credentialing requirements for providers of group rehabilitative services in foster care setting. Revisions will now allow the admittance of children with a provisional diagnosis to the residential foster care program for a maximum of 30 days. During the 30 day period, a full assessment must be completed by a Mental Health Professional resulting in a DSM IV primary diagnosis for placement in this program to continue. Additional revisions will: (1) clarify provider credentialing; (2) update language to reflect current practices, procedures, and terminology; (3) allow 30 minutes of individual and/or family therapy to be provided in lieu of one hour of group rehabilitative treatment; (4) revise the minimum required individual therapy service from two 30 minute sessions per week to four 30 minute sessions per month; (5) revise the minimum required substance abuse, chemical dependency education, prevention and therapy from two hours per month to two hours per three month period; (6) add discharge planning as a required residential behavior management service (RBMS); and (7) add the American Osteopathic Association as an accreditation body for providers of RBMS. The Department of Human Services or the Office of Juvenile Affairs pay the state share of residential behavior management services for the children in foster care and DHS has requested these revisions to Agency rules. DHS and Agency provider requirements for RBMS have significantly increased in the past few years, yet the rate has remained the same for nine years. DHS staff are concerned that unless these revisions are adopted, there will be a reduction in the number of providers who are willing to contract to provide the specialized services. The inability to find appropriate community based placement for DHS custody children will result in an increase in inpatient psychiatric utilization and costs. Rule revisions are needed in order to implement a more cost effective method of providing residential behavior management services in foster care settings to maintain an adequate pool of service providers.

**CONTACT PERSON:**

Joanne Terlizzi at 522-7272

**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 MAY 27, 2003:**

## **SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

### **PART 9. LONG TERM CARE FACILITIES**

## Permanent Final Adoptions

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### 317:30-5-131.2. Quality of care fund requirements and report

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

- (1) **"Nursing Facility and Intermediate Care Facility for the mentally retarded"** means any home, establishment, or institution or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes.
- (2) **"Quality of Care Fee"** means the fee assessment created for the purpose of quality care enhancements pursuant to Section 2002 of Title 56 of the Oklahoma Statutes upon each nursing facility and intermediate care facility for the mentally retarded licensed in this State.
- (3) **"Quality of Care Fund"** means a revolving fund established in the State Treasury pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.
- (4) **"Quality of Care Report"** means the monthly report developed by the Oklahoma Health Care Authority to document the staffing ratios, total patient gross receipts, total patient days, and minimum wage compliance for specified staff for each nursing facility and intermediate care facility for the mentally retarded licensed in the State.
- (5) **"Staffing ratios"** means the minimum direct-care-staff-to-resident ratios pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes.
- (6) **"Peak In-House Resident Count"** means the maximum number of in-house residents at any point in time during the applicable shift.
- (7) **"Staff Hours worked by Shift"** means the number of hours worked during the applicable shift by direct-care staff.
- (8) **"Direct-Care Staff"** means any nursing or therapy staff who provides direct, hands-on care to residents in a nursing facility and intermediate care facility for the mentally retarded pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes and as defined in subsection (c) of this Section.
- (9) **"Major Fraction Thereof"** is defined as an additional threshold for direct-care-staff-to-resident ratios at which another direct-care staff person(s) is required due to the peak in-house resident count exceeding one-half of the minimum direct-care-staff-to-resident ratio pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes.
- (10) **"Minimum wage"** means the amount paid per hour to specified staff pursuant to Section 5022.1 of Title 63 of the Oklahoma Statutes.
- (11) **"Specified staff"** means the employee positions listed in the Oklahoma Statutes under Section 5022.1 of Title 63 and as defined in subsection (d) of this Section.
- (12) **"Total Patient Days"** means the monthly patient days that are compensable for the current monthly Quality of Care Report.
- (13) **"Total Gross Receipts"** means all cash received in the current Quality of Care Report month for services rendered to all residents in the facility. Receipts should include all Medicaid, Medicare, Private Pay and Insurance

including receipts for items not in the normal per diem rate. Charitable contributions received by the nursing facility shall not be included.

(b) **Quality of care fund assessments.**

- (1) The Oklahoma Health Care Authority (OHCA) was mandated by the Oklahoma Legislature to assess a monthly service fee to each Licensed Nursing Facility in the State. The fee shall be assessed on a per patient day basis. The amount of the fee shall be uniform for each facility type. The fee shall be determined as six percent (6%) of the average total gross receipts divided by the total days for each facility type.
- (2) In determination of the fee for the time period beginning October 1, 2000, a survey was mailed to each licensed nursing facility requesting calendar year 1999 Total Patient Days, Gross Revenues and Contractual Allowances and Discounts. This data shall be used to determine the amount of fee to be assessed for the period of 10-01-00 through 06-30-01. The fee shall be determined by totaling the "annualized" gross revenue and dividing by the "annualized" total days of service. "Annualized" means that the surveys received that do not cover the whole year of 1999 shall be divided by the total number of days that are covered and multiplied by 365.
- (3) The fee for subsequent State Fiscal Years shall be determined by using the monthly gross receipts and census reports for the six (6) month period October 1 through March 31 of the prior fiscal year, annualizing those figures, and then determining the fee as defined above.
- (4) Monthly reports of Gross Receipts and Census shall be included in the monthly Quality of Care Report. The data required includes, but is not limited to, the Total Gross Receipts and Total Patient Days for the current monthly report.
- (5) The method of collection shall occur as follows:
  - (A) The Oklahoma Health Care Authority shall assess each facility monthly based on the reported patient days from the Quality of Care Report filed two (2) months prior to the month of the fee assessment billing. As defined in this subsection, the total assessment shall be the fee times the total days of service. The Oklahoma Health Care Authority shall notify the facility of its assessment by the end of the month of the Quality of Care Report submission date.
  - (B) Payment shall be due to the Oklahoma Health Care Authority by the 10<sup>th</sup> of the following month. Failure to pay the amount by the 10<sup>th</sup> or failure to have the payment mailing postmarked by the 8<sup>th</sup> shall result in a debt to the State of Oklahoma and shall be subject to penalties of ten percent (10%) of the amount and interest of one and one-quarter percent (1.25%) per month. The Quality of Care Fee shall be submitted no later than the 10<sup>th</sup> of the month. If the 10<sup>th</sup> falls upon a holiday or weekend (Saturday-Sunday), the fee shall be due by 5 p.m. (Central Standard Time) of the following business day (Monday-Friday).
  - (C) The monthly assessment including applicable penalties and interest shall be paid regardless

of any appeals action requested by the facility. If a provider fails to pay the Authority the assessment within the time frames noted on the second invoice to the provider, the assessment, applicable penalty, and interest will be deducted from the facility's payment. Any change in payment amount resulting from an appeals decision will be adjusted in future payments. Adjustments to prior months' reported amounts for gross receipts or patient days may be made by filing an amended part C of the Quality of Care Report.

(D) The Quality of Care fee assessments excluding penalties and interest are an allowable cost for Oklahoma Health Care Authority Cost Reporting purposes.

(E) The Quality of Care fund shall contain assessments collected excluding penalties and interest as described in this subsection and any interest attributable to investment of any money in the fund shall be deposited in a revolving fund established in the State Treasury. The funds will be used pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.

(c) **Quality of care direct-care-staff-to-resident-ratios.**

(1) Effective September 1, 2000, all nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR) subject to the Nursing Home Care Act, in addition to other state and federal staffing requirements, shall maintain the minimum direct-care-staff-to-resident ratios as cited in Section 1-1925.2 of Title 63 of the Oklahoma Statutes.

(2) For purposes of staff-to-resident ratios, direct-care staff are limited to the following employee positions:

- (A) Registered Nurse
- (B) Licensed Practical Nurse
- (C) Nurse Aide
- (D) Certified Medication Aide
- (E) Qualified Mental Retardation Professional (ICFs/MR only)
- (F) Physical Therapist
- (G) Occupational Therapist
- (H) Respiratory Therapist
- (I) Speech Therapist
- (J) Therapy Aide/Assistant
- (K) Social Services Director/Social Worker
- (L) Other Social Services Staff
- (M) Activities Director
- (N) Other Activities Staff
- (O) Combined Social Services/Activities

(3) Prior to September 1, ~~2002~~ 2003, activity and social services staff who are not providing direct, hands-on care may be included in the direct-care-staff-to-resident ratio in any shift. On and after September 1, ~~2002~~ 2003, such persons shall not be included in the direct-care-staff-to-resident ratio.

(4) In any shift when the direct-care-staff-to-resident ratio computation results in a major fraction thereof, direct-care staff shall be rounded to the next higher whole number.

(5) To document and report compliance with the provisions of this subsection, nursing facilities and intermediate care facilities for the mentally retarded shall submit the monthly Quality of Care Report pursuant to subsection (e) of this Section.

(d) **Quality of care minimum wage for specified staff.** Effective November 1, 2000, all nursing facilities and private intermediate care facilities for the mentally retarded receiving Medicaid payments, in addition to other federal and state regulations, shall pay specified staff not less than in the amount of ~~Six Dollars and Sixty-five Cents~~ (\$6.65) per hour.

(1) Employee positions included for purposes of minimum wage for specified staff are as follows:

- (A) Registered Nurse
- (B) Licensed Practical Nurse
- (C) Nurse Aide
- (D) Certified Medication Aide
- (E) Other Social Service Staff
- (F) Other Activities Staff
- (G) Combined Social Services/Activities
- (H) Other Dietary Staff
- (I) Housekeeping Supervisor and Staff
- (J) Maintenance Supervisor and Staff
- (K) Laundry Supervisor and Staff

(2) To document and report compliance with the provisions of this subsection, all nursing facilities and private intermediate care facilities for the mentally retarded receiving Medicaid payments shall submit the requested information pertaining to Minimum Wage Compliance on the Quality of Care Report monthly pursuant to subsection (e) of this Section.

(e) **Quality of care reports.** Effective September 1, 2000, all nursing facilities and intermediate care facilities for the mentally retarded shall submit a monthly report developed by the Oklahoma Health Care Authority, the Quality of Care Report, for the purposes of documenting the extent to which such facilities are compliant with the minimum direct-care-staff-to-resident ratios and the minimum wage requirements for specified staff.

(1) The monthly report must be signed by the preparer and by the Owner, authorized Corporate Officer or Administrator of the facility for verification and attestation that the reports were compiled in accordance with this section.

(2) The Owner or authorized Corporate Officer of the facility shall retain full accountability for the report's accuracy and completeness regardless of report submission method.

(3) Penalties for false statements or misrepresentation made by or on behalf of the provider are provided at 42 U.S.C. Section 1320a-7b which states, in part, "*Whoever... (2) at any time knowingly and willfully makes or causes to be made any false statement of a material fact for use in determining rights to such benefit or payment... shall (i) in the case of such statement, representation, concealment, failure, or conversion by any person in connection with furnishing (by that person) of items or services for which payment is or may be made under this*

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*title (42 U.S.C. §1320 et seq.), be guilty of a felony and upon conviction thereof fined not more than \$25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than \$10,000 or imprisoned for not more than one year, or both."*

(4) The Quality of Care Report shall be submitted by 5 p.m. (CST) on the 15<sup>th</sup> of the following month. If the 15<sup>th</sup> falls upon a holiday or a weekend (Saturday-Sunday), the report shall be due by 5 p.m. (CST) of the following business day (Monday - Friday).

(5) The Quality of Care Report will be made available in an electronic version for uniform submission of the required data elements.

(6) Facilities shall submit the monthly report either through electronic mail to the Provider Compliance Audits Unit or send the monthly report in disk or paper format by certified mail. The submission date shall be determined by the date and time recorded through electronic mail or the postmark date and the date recorded on the certified mail receipt.

(7) Should a facility discover an error in its submitted report for the previous month only, the facility shall provide to the Provider Compliance Audits Unit written notification with adequate, objective and substantive documentation within five (5) business days following the submission deadline. Any documentation received after the five (5) business day period shall not be considered in determining compliance and for reporting purposes by the Oklahoma Health Care Authority.

(8) An initial administrative penalty of \$150.00 ~~per calendar day past the Quality of Care Report submission deadline~~ shall be imposed upon the facility for incomplete or ~~non-timely~~ non-timely filing of the Quality of Care Report. Additionally, a daily administrative penalty will begin upon the Authority notifying the facility in writing that the report was not complete or not timely submitted as required. The \$150.00 daily administrative penalty shall accrue for each calendar day after the date the notification is received. The penalties shall be deducted from the Medicaid facility's payment. For one hundred percent (100%) private pay facilities, the penalty amount(s) shall be included and collected in the fee assessment billings process. ~~The daily penalty shall be calculated based upon the time of day the report is submitted; therefore, \$150.00 shall be imposed for each calendar day when the completed report is not submitted by 5 p.m. (CST).~~ Imposed penalties for incomplete reports or non-timely filing shall not be considered for Oklahoma Health Care Authority Cost Reporting purposes.

(9) The Quality of Care Report shall include, but is not limited to, information pertaining to the necessary reporting requirements in order to determine the facility's compliance with subsections (b), (c) and (d) of this Section. Such reported information includes, but is not limited to: staffing ratios; peak in-house resident count;

staff hours worked by shift; payroll information relevant to minimum wage; total patient days; and total gross receipts.

(10) Desk audits will be performed monthly on each facility to ascertain instances of non-compliance pursuant to subsections (b), (c) and (d) of this Section. Announced/unannounced on-site audits of reported information may also be performed.

(11) Direct-care-staff-to-resident information and on-site audit findings pursuant to subsection (c), will be reported to the Oklahoma State Department of Health for their review in order to determine "willful" non-compliance and assess penalties accordingly pursuant to Title 63 Section 1-1912 through Section 1-1917 of the Oklahoma Statutes. The Oklahoma State Department of Health shall inform the Oklahoma Health Care Authority of all final penalties as required in order to deduct from the Medicaid facility's payment. Imposed penalties shall not be considered for Oklahoma Health Care Authority Cost Reporting purposes.

(12) Pursuant to subsection (d), the monitoring of minimum wage compliance for specified staff by the Oklahoma Health Care Authority shall begin with the November monthly report that shall be submitted by 5 p.m. (CST) on December 15<sup>th</sup>, 2000. If a Medicaid provider is found non-compliant pursuant to subsection (d) based upon a desk audit and/or an on-site audit, for each hour paid to specified staff that does not meet the regulatory minimum wage of ~~Six Dollars and Sixty five cents~~ (\$6.65), the facility must reimburse the employee(s) retroactively to meet the regulatory wage for hours worked. Additionally, an administrative penalty of ~~Twenty five dollars~~ (\$25.00) shall be imposed for each non-compliant staff hour worked. For Medicaid facilities, a deduction shall be made to their payment. Imposed penalties for non-compliance with minimum wage requirements shall not be considered for Oklahoma Health Care Authority Cost Reporting purposes. Furthermore, ~~one hundred percent~~ (100%) private pay facilities and public intermediate care facilities for the mentally retarded shall not be required to provide minimum wage information on the Quality of Care Report.

(13) Long Term Care facility providers may appeal the administrative penalty described in subsection (b)(5)(B) and subsections (e) (8) and (e) (12).

### PART 41. FAMILY SUPPORT SERVICES

#### 317:30-5-412. Description of services

Family Support Services include the following:

(1) **Transportation services.** Transportation services are provided in accordance with OAC 317:40-5-103.

(A) **Minimum qualifications.** Transportation Service providers must have a valid and current Oklahoma Driver's License plus vehicle(s) must meet applicable local and state requirements for vehicle license, inspection, insurance and capacity.

~~(B) **Description of services.** Transportation services provide transportation to programs necessary to enhance community/living skills and integration. Services include, but are not limited to, transportation to and from medical appointments except as covered under the State Medicaid Plan, recreational activities and other community activities as specified in the individual's habilitation plan. Services may be provided to eligible individuals age six and older. Transportation services may be provided in any community setting in which the recipient resides.~~

~~(C) **Coverage limitations.** Mileage costs for transportation provided to more than one client at the same time to the same location may only be claimed for one client.~~

~~(i) **Procedure Description:** Transportation Mileage; **Rate:** regular state mileage rate rounded down to the nearest whole cent; **Limitation:** \$5,000 each 12 months.~~

~~(ii) **Procedure Description:** Transportation Other; **Rate:** Public Rate; **Limitation:** As specified in IHP.~~

(2) **Adaptive equipment services.** Adaptive equipment (assistive technology) services are provided in accordance with OAC 317:40-5-100.

~~(A) **Minimum qualifications.** Adaptive equipment providers must meet all applicable state and local requirements for licensure and/or certification.~~

~~(B) **Description of services.** Adaptive equipment services provide for evaluation, limited rental, customization, maintenance and repair, and/or provision of specialized equipment for eligible individuals age six and older. Services are intended to enable individuals to perform daily living skills, socialization and/or work activities with reduced reliance upon others. Services are supplied in any community setting as specified in the individual's habilitation plan. Such equipment is limited to items which have no utility apart from the needs of the disabled recipient and is not otherwise available under Oklahoma's Title XIX State Plan.~~

~~(C) **Coverage limitations.** Limits are specified in each recipient's IHP.~~

(3) **Architectural modification.** Architectural modification services are provided in accordance with OAC 317:40-5-101.

~~(A) **Minimum qualifications.** Architectural modification providers must meet local and state requirements for building contractors. Such requirements will include those set forth by the State of Oklahoma through Building Officials and Code Administrators (BOCA) legislation which includes requirements for building, electrical, plumbing and mechanical inspections. In addition to occupancy requirements, construction must meet specifications set forth by American National Standard Specifications for Making Buildings and Facilities Accessible~~

~~to and Usable by Physically Handicapped People (ANSI Standards).~~

~~(B) **Description of services.** Alterations to existing residence of eligible individuals six years of age and older. Services, as specified in the individual's IHP, are intended to enhance accessibility and safety of homes for individuals with mobility difficulties. Such modifications are limited to items which have no utility apart from the needs of the disabled recipient.~~

~~(C) **Coverage limitations.** Limits are specified in each recipient's IHP.~~

(4) **Family training.**

(A) **Minimum qualifications.** Training providers must hold current licensure as a clinical social worker, psychologist, professional counselor, psychiatrist, registered nurse, nutritionist/dietitian, physical therapist, occupational therapist or speech therapist. Training may also be provided by other local or state agencies whose programs have been approved by the Developmental Disabilities Services Division (DDSD) Director of Training.

(B) **Description of services.** Family Training Services include instruction in skills and knowledge pertaining to the support and assistance of persons with developmental disabilities provided to individuals and natural, adoptive or foster families of eligible individuals age six and older. Services are intended to allow families to become more proficient in meeting the needs of eligible individuals. Services are provided in any setting in which the individual/family resides and/or the provider conducts business and may be provided in either group (2-15 persons) or individual formats.

(C) **Coverage limitations.** Payment rates and coverage limitations for family training are as follows:

(i) **Description:** Individual Family Training; **Payment Rate:** 95% of Billed Charges; **Limitation:** \$5,000 each 12 months.

(ii) **Description:** Group Family Training; **Payment Rate:** 95% of Billed Charges; **Limitation:** \$5,000 each 12 months.

(5) **Family counseling.**

(A) **Minimum qualifications.** Counseling providers must hold current licensure as a clinical social worker, psychologist or professional counselor.

(B) **Description of services.** Family Counseling Services include counseling in emotional and social issues provided to eligible individuals age six and older and their natural, adoptive or foster families. Services are intended to maximize individual's/family's emotional/social adjustment and well-being. Services are rendered in any setting in which the individual/family resides or the provider's office and may be provided in either group (six person maximum) or individual formats.

(C) **Coverage limitations.** Payment rates and coverage limitations for family counseling are as follows:

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- (i) Description: Individual Family Counseling; Unit: 15 minutes; Limitation: 400 units each 12 months.
  - (ii) Description: Group Family Counseling; Unit: 30 minutes; Limitation: 225 units each 12 months.
- (6) **Specialized medical supplies.**
- (A) **Minimum qualifications.** Specialized medical equipment providers must meet all applicable state and local requirements for licensure and/or certification.
- (B) **Description of services.** Specialized medical supplies include supplies specified in the plan of care, which enable individuals to increase their abilities to perform activities of daily living. This service also includes the purchase of ancillary supplies not available under Oklahoma's Title XIX State Plan and ~~exclude~~ excludes those items which are not of direct medical and remedial benefit to the individual. All items shall meet applicable standards of manufacture, design and installation. Supplies include, but are not limited to:
- (i) prescriptions in excess of Medicaid limitations;
  - (ii) adult briefs;
  - (iii) nutritional supplements;
  - (iv) supplies needed for tracheotomy/respirator/ventilator care; and
  - (v) supplies for decubitus care.
- (C) **Coverage limitations.** Specialized medical services are billed using the appropriate HCPC Code. Individual limits are specified in each recipient's IHP. All services require prior authorization.

### PART 79. DENTISTS

#### 317:30-5-700.1. Orthodontic prior authorization

- (a) The necessary documentation for seeking orthodontic services for a child is listed below. The following records and documentation, plainly labeled with the patient's full name, case number, and the orthodontist's name, must be submitted to the Medical Authorization Unit of the OHCA for review.
- (1) Completed DHS form MS-MA-5, Notification of Needed Medical Services, Section I and Section III;
  - (2) Completed and scored Handicapping Labio-Lingual Deviations Index with Diagnosis of Angle's classification;
  - (3) Detailed description of any oromaxillofacial anomaly;
  - (4) Estimated length of treatment;
  - (5) If multi-stage treatment is indicated, delineate each stage, as well as the service to be provided and length of treatment required for each stage;
  - (6) Properly occluded and anatomically trimmed study models;
  - (7) Panoramic films. Cephalometric x-rays with tracing and facial photographs are not compensable and are

not required to be submitted with a request for prior authorization of orthodontic treatment;

- (8) An oral surgeon's written opinion that orthognathic surgery or bone grafting is indicated; and
  - (9) Additional pertinent information as determined by the orthodontist or as requested by OHCA's Orthodontic Consultant.
- (b) Models, radiographs and all required documentation must be submitted in one package. OHCA shall not be responsible for lost or damaged materials.
- (c) All records and documentation submitted in a request for prior authorization for orthodontic treatment shall be reviewed by the OHCA Orthodontic Consultant for compensability and length of treatment.
- (d) The Oklahoma Health Care Authority recognizes that some children who do not receive a score of 26 on the Handicapping Labio-Lingual Deviation Index (HLD) may have other conditions which should be scored. In the case that an orthodontist believes that there are other medical, social, or emotional conditions which may impact the general health of the child, such conditions are listed on the EPSDT exception section found on the HLD. Other "medical, social, or emotional conditions" are limited to those conditions that affect the medical, social or emotional function of the child. Other medical, social, or emotional conditions will not be scored if the sole condition sought to be improved is the cosmetic appearance of the child. Such "other medical, social, or emotional conditions" must be demonstrated by objective evidence such as supported documentation outside the child's immediate family (i.e., a child's teacher, primary care physician, mental health provider, school counselor). Such objective evidence must be submitted with the HLD. When such "other medical, social, or emotional conditions" are reflected on the HLD, the OHCA Orthodontic Consultant shall review the data and use his or her professional judgment to score the value of the conditions. The OHCA Orthodontic Consultant may consult with and utilize the opinion of the orthodontist who completes the form.
- (e) If it is determined that the malocclusion is not severe enough to warrant medically necessary orthodontic services or the patient's age precludes approval, a computer generated notice is issued with notice of the denial, the reason for the denial, and appeal rights (see OAC 317:2-1 for grievance procedures and process).
- (f) If orthodontic treatment is approved, a computer generated notice is issued authorizing the first year of treatment. Authorization for the first year will include the banding and wires and the first year of adjustments. Subsequent adjustments will be authorized in one year intervals. All approved treatment will be included on the original prior authorization and will include the total payment for that treatment year. Payment for the first year of treatment includes the banding, wires, and adjustments ~~includes as well as~~ includes as well as all ancillary services, including the removal ~~or repair~~ includes as well as of appliances, and the construction and placing of retainers ~~and the replacement of lost or broken retainers~~. The authorization number on the form must be included on all claims submitted for processing. The provider will file one claim at the beginning of each treatment year for the entire year.

- (g) Relative Value Units (RVU's) have been developed by OHCA for the first year's treatment and each subsequent year's treatment. The allowable charge will be computed by multiplying the RVU by the current conversion factor.
- (h) If the client moves from the geographic area or shows a need to change their provider, then the provider who received the yearly payment is financially responsible until completion of that client's orthodontic treatment for the current year.
- (i) If the provider who received yearly payment does not agree to be financially responsible, then the Oklahoma Health Care Authority will recoup funds paid for the client's orthodontic treatment.
- (j) All orthodontic services are subject to post-utilization review. This review may include a request by the OHCA to submit medical documentation necessary to complete the review. After review is completed, these materials will be returned to the orthodontist.
- (k) Study models must be diagnostic. This means that they must be properly poured and adequately trimmed with neither large voids nor positive bubbles present. Centric occlusion must be clearly indicated by pencil lines on the study models, making it possible to occlude the teeth on the models in centric occlusion.
  - (1) If study models are not diagnostic as described, they are not accepted and the provider is asked to send new models that do meet these requirements. If the provider does not respond, the request for treatment is denied.
  - (2) All measurements are made or judged on the basis of greater than or more than the minimal criteria. Measurement, counting, recording, or consideration is performed only on teeth that have erupted and may be seen on the study models.

**PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES IN FOSTER CARE SETTINGS**

**317:30-5-740. Eligible providers**

- (a) Eligible Residential Behavior Management Service (RBMS) agencies must:
  - (1) have a current certification from the Department of Human Services (DHS) as a child placing agency, and
  - (2) have a contract with the Division of Children and Family Services of the Department of Human Services, and
  - (3) have a contract with the Oklahoma Health Care Authority.
- (b) Effective July 1, 2002 an eligible RBMS must:
  - (1) have a current certification from the Department of Human Services (DHS) as a child placing agency, and
  - (2) have a contract with the Division of Children and Family Services of the Department of Human Services, and
  - (3) have a contract with the Oklahoma Health Care Authority- , and

- (4) have current accreditation status appropriate to provide behavioral management services in a foster care setting from:
  - (A) Joint Commission on Accreditation of Health Care Organization (JCAHO), or
  - (B) the Rehabilitation Accreditation Commission (CARF), or
  - (C) the Council on Accreditation (COA), or
  - (D) the American Osteopathic Association (AOA).
- (c) For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services ~~of performed by~~ their providers, a provider of behavior management therapies must:
  - (1) be a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board ~~Supervision approved supervision~~ to be licensed in one of the above stated areas; or
  - (2) have one year of experience in a behavioral health treatment program and a master's degree in a mental health treatment field licensable in Oklahoma by one of the following licensing Boards:
    - (A) Psychology,
    - (B) Social work (clinical specialty only),
    - (C) ~~Licensed professional Professional~~ counselor,
    - (D) ~~Licensed marriage Marriage~~ and family therapist, or
    - (E) ~~Licensed behavioral Behavioral~~ practitioner; or
  - (3) have a baccalaureate degree in a mental behavioral health related field in one of the stated areas listed in (2) of this paragraph AND three or more years post-baccalaureate experience in providing direct patient care in a behavioral health treatment setting and be provided a minimum of weekly supervision by a staff member licensed as listed in paragraph (1) of this paragraph subsection; or
  - (4) be a registered psychiatric nurse; AND
  - (5) demonstrate a general professional or educational background in the following areas:
    - (A) case management, assessment and treatment planning;
    - (B) treatment of victims of physical, emotional, and sexual abuse;
    - (C) treatment of children with attachment disorders;
    - (D) treatment of children with hyperactivity or attention deficit disorders;
    - (E) treatment methodologies for emotionally disturbed children and youth;
    - (F) normal childhood development and the effect of abuse and/or neglect on childhood development;
    - (G) treatment of children and families with substance abuse and chemical dependency disorders;
    - (H) anger management; and
    - (I) crisis intervention.
- (d) For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services of their providers for behavior management therapies in a foster care setting as of July 1, 2003 providers must have the following qualifications:

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(1) be licensed in the state in which the services are delivered as a licensed psychologist, social worker (clinical speciality only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board ~~Supervision~~ approved supervision to be licensed in one of the ~~above stated~~ areas listed in (c)(2)(A-E) of this section, or

(2) be licensed as a ~~Advanced Practice Nurse~~ an advanced practice nurse certified in a psychiatric mental health speciality, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which services are provided AND

(3) demonstrate a general professional or educational background in the following areas:

- (A) case management, assessment and treatment planning;
- (B) treatment of victims of physical, emotional, and sexual abuse;
- (C) treatment of children with attachment disorders;
- (D) treatment of children with hyperactivity or attention deficit disorders;
- (E) treatment methodologies for emotionally disturbed children and youth;
- (F) normal childhood development and the effect of abuse and/or neglect on childhood development;
- (G) treatment of children and families with substance abuse and chemical dependency disorders;
- (H) anger management; and
- (I) crisis intervention.

(e) For eligible RBMS agencies to bill the Oklahoma Health Care Authority for Group Rehabilitative Treatment Services in a foster care setting facilitated by their staff, providers must have the following qualifications:

(1) be licensed in the state in which the services are delivered as a licensed psychologist, social worker (clinical speciality only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board approved supervision to be licensed in one of the areas listed in (c)(2)(A-E) of this section; or

(2) be licensed as an advanced practice nurse certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which services are provided; or

(3) have a baccalaureate degree in a behavioral health field, a minimum of one year of experience in providing direct care and/or treatment to children and/or families, and have access to weekly consultation with a licensed mental health professional.

### 317:30-5-740.1. Eligible provider contracting requirements

(a) Eligible agency providers that are defined in section OAC 317:30-5-740 shall have written policies and procedures for the orientation of new staff and foster parents which is reviewed and updated annually, for the following:

(1) pre-service training of foster parents in treatment methodologies and service needs of emotionally and behaviorally disturbed children;

(2) treatment of victims of physical, emotional, and sexual abuse;

(3) treatment of children with attachment disorders;

(4) treatment of children with hyperactive or attention deficit disorders;

(5) normal childhood development and the effect of abuse and/or neglect on childhood development;

(6) treatment of children and families with substance abuse and chemical dependency disorders;

(7) ~~the Child in Need of Mental Health Treatment Act~~ Inpatient Mental Health and Substance Abuse Treatment of Minors Act;

(8) anger management;

(9) ~~gatekeeping~~ inpatient authorization procedures;

(10) crisis intervention;

(11) grief and loss issues for children in foster care; and

(12) the significance/value of birth families to children ~~placed~~ receiving services in residential behavior management services in a foster care setting.

(b) Eligible agency providers defined at OAC 317:30-5-740 shall provide staff with access to professional psychiatric and/or psychological consultation as deemed necessary for the planning, implementation and appropriate management of the resident's treatment.

### 317:30-5-741. Coverage by category

(a) **Adults.** Residential Behavior Management Services are not covered for adults.

(b) **Children.** Residential Behavior Management Services are provided in residential foster care programs for certain children and youth ~~designated~~ authorized by a gatekeeping the designated agent of the Oklahoma Health Care Authority. The children and youth designated for this program have special psychological, social and emotional needs, requiring more intensive, therapeutic care than can be found in the traditional foster care setting. The designated children and youth must ~~continually~~ meet the following medical necessity criteria ~~or other criteria~~ to be eligible for coverage in this program. ~~This~~ The medical necessity criteria ~~must be~~ is continually met ~~during both~~ for initial requests for services and all subsequent requests for services/ extensions. Medical necessity criteria is as follows:

(1) Any DSM-IV AXIS I primary diagnosis, with the exception of V codes and adjustment disorders, with a detailed description of the symptoms supporting the diagnosis. Children with a provisional diagnosis may be admitted for a maximum of 30 days. An assessment must be completed by a Mental Health Professional as defined in OAC 317:30-5-240(c) within the 30 day period resulting in a DSM-IV AXIS I primary diagnosis with the exception of V codes and adjustments disorders, with a detailed description of the symptoms supporting the diagnosis to continue RBMS in a foster care setting.

(2) Conditions are directly attributed to a mental illness/serious emotional disturbance as the primary need for professional attention.

(3) It has been determined by the gatekeeper inpatient authorization reviewer that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.

(4) Evidence that the child's presenting emotional and/or behavioral problems prohibit full integration in a family/home setting without the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff, preventing the child from living in a traditional family home.

(5) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(6) The legal ~~guardian~~ guardian/parent of the child (DHS/OJA if custody child, ~~parent generally otherwise~~) agrees to ~~active participation~~ actively participate in the child's treatment needs and planning.

**317:30-5-742. Description of services**

(a) Behavior management services mean all the services listed in ~~(4)-(7)~~ (1)-(8) of this subsection as provided in the treatment plan of treatment. Each of the service requirements have special duration and frequency requirements as set out in OAC ~~317:30-5-743~~ 317:30-5-742.2.

- (1) Individual therapy;
- (2) Substance abuse/chemical dependency education, prevention, and therapy;
- (3) Group ~~therapy~~ rehabilitative treatment;
- (4) Family therapy;
- (5) Basic living skills redevelopment;
- (6) Social skills redevelopment; ~~and~~
- (7) Crisis/behavior management redirection; and
- (8) Discharge planning.

(b) Behavior management services must be provided in the least restrictive, noninstitutional therapeutic milieu. The foster care setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting. Behavior management services are considered an ancillary component of inpatient hospital care and residential treatment services provided in a less restrictive setting and as a less costly alternative to inpatient psychiatric hospital services and other residential treatment services.

(c) Behavioral Management Services must include a treatment plan for each client served. The treatment plan requirements are set out in OAC ~~317:30-5-742.2~~ 317:30-5-742.2(1).

**317:30-5-742.1. Residential behavior management reimbursement**

(a) All Residential Behavioral Management Services must be prior authorized by the designated agent of the Oklahoma Health Care Authority before the service is rendered by an eligible service provider. Without prior authorization, payment is not authorized.

(b) The Oklahoma Health Care Authority will not reimburse for the services defined in OAC 317:30-5-742 for more than two children in a home at any one time unless additional cases are specifically authorized by the Department of Human Services, Division of Children and Family Services or Oklahoma ~~Office of Juvenile Authority Affairs~~.

(c) A child who is eligible for the ~~service~~ services defined in OAC 317:30-5-742 shall not receive any other outpatient behavioral ~~service~~ health services defined by OHCA unless prior authorized by ~~OHCA's~~ OHCA or its ~~gatekeeping~~ designated agent. For example, separate individual therapy for a child eligible for Residential Behavioral Management Services will not generally be authorized because this service is part of the bundled service provided by a Residential Behavioral Management ~~Provider~~ provider. If additional outpatient ~~service~~ services are authorized by ~~OHCA's~~ OHCA or its designated agent, the service provider may not be the provider of the Residential Behavioral Management Services.

(d) OHCA will not reimburse an eligible service provider for ~~more~~ units of service ~~than that~~ are not authorized before the service is delivered.

(e) Initial requests for residential foster care ~~will and the~~ first extension request will be approved for a maximum of six months. All subsequent requests for services/extensions will be for a maximum time period not to exceed three months.

(f) No reimbursement shall be made for a service for a client without a written plan of treatment for each client as described in OAC ~~317:30-5-742(e)~~ 317:30-5-742.2(1). Each ~~plan~~ of treatment plan must contain all of the services required in OAC 317:30-5-742(a).

**317:30-5-742.2. Required Residential Behavior Management services**

All residential behavior management services in a foster care setting (RBMS) are provided as a result of an individual assessment of the resident's needs and documented in the individual treatment plan. Services including treatment plan development, individual therapy, family therapy, basic living skills (re)development, social skills (re)development, group rehabilitative treatment, substance abuse/chemical dependency education, prevention and therapy are provided per minimum requirements identified in this section. All services are based upon the resident's treatment plan and consistent with assessed needs. Individual therapy and family therapy may be provided in lieu of group rehabilitative therapy. Crisis behavior management and redirection services are provided as needed. The following represent the minimum service requirement for a resident receiving ~~residential~~ Residential Behavior Management Services:

**(1) Treatment plan requirement.**

(A) A written treatment plan for each resident shall be formulated by the Provider Agency staff within 30 days of admission with documented input from the resident, legal guardian (DHS/OJA) staff, the foster parent and the treatment provider(s). This plan shall be revised and updated each 90 days with documented involvement of the legal guardian and resident.

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(B) The treatment plan must be individualized and take into account the resident's age, history, diagnosis, assessed functional levels, and culture. It includes the resident's documented full five-axis DSM-IV diagnosis, appropriate long term and short term goals, and corresponding measurable objectives to obtain the stated goals within the expected time lines. Each resident's treatment plan shall also address the ~~Provider Agency's~~ provider agency's plans with regard to the provision of services in each of the following areas:

- (i) Individual therapy;
- (ii) Substance abuse/chemical dependency education, prevention, and therapy;
- (iii) ~~Group therapy~~ rehabilitative treatment;
- (iv) Family therapy;
- (v) Basic living skills ~~redevelopment~~ (re)development;
- (vi) Social skills ~~redevelopment~~ (re)development; ~~and~~
- (vii) Crisis/behavior management and redirection; ~~and~~
- (viii) Discharge planning.

(2) **Individual therapy.** The ~~Provider~~ Agency ~~provider agency~~ shall provide individual therapy on a ~~week~~ monthly basis to the youth placed in the residential foster care homes. Individual therapy is a method of treating mental health and alcohol and other drug disorders using face to face, ~~or~~ a one to one interaction between a Mental Health Professional as defined in OAC 317:30-5-240(c) and the resident to promote behavioral, emotional or psychological change. Individual therapy is age appropriate and the techniques and modalities employed are relevant to the goals of the individual's treatment plan. The required service for each resident served is a minimum of ~~two 30 minute~~ four 30 minute sessions per ~~week~~ month of individual therapy.

(3) **Group therapy.** ~~The Provider Agency shall provide group therapy on a monthly basis to the resident's receiving Residential Behavior Management services. Group therapy is a method of treating mental health or alcohol and drug disorders by using the interaction between a Mental Health Professional and two or more residents to promote behavioral or emotional change. Group therapy modalities and techniques should be age appropriate and the focus of the group must be directly related to the goals and objectives stated in the individual treatment plan. The individual resident's behavior, and the focus of the group must be included in each resident's record. If group treatment is contra-indicated for resident receiving services from a residential behavioral management provider, individual therapy must be provided in its place. In the event that group therapy is provided, a minimum of three 30 minute sessions a month must be provided. If individual therapy is provided as a substitute for group therapy, then 60 minutes of individual therapy must be provided per month. This therapy is provided in addition to the requirement in OAC 317:30-5-742.2.~~

(3) **Group rehabilitative treatment.** The provider agency will provide group rehabilitative treatment as specified in the individual treatment plan for the treatment of mental health and behavioral disorders for a minimum of two 30 minute sessions per month. Group rehabilitative services provided for children receiving RBMS in a foster care setting include educational and supportive services such as basic living skills, social skills (re)development, interdependent living, self-care, lifestyle change and recovery principles. Services are provided in the least restrictive setting appropriate for the reduction of emotional and behavioral impairment and suitable to the restoration of the resident's functioning. Services are consistent with the requirements of age and appropriate to the resident's behavioral functioning and self sufficiency. Meeting with family members, legal guardian, and/or care givers is covered when the services are directed exclusively to the effective treatment of the individual resident. Each service provided under this section must have a goal and purpose, which relates directly to the resident's individual treatment plan. Compensable rehabilitative treatment services are provided to residents who have the ability to benefit from the service. The resident must be able to actively participate and must possess the cognitive, developmental, and communication skills necessary to benefit from the service. Travel time to and from activities is not covered. Staff to resident ratio shall not exceed eight children to one staff member. Staff appropriately trained, including training and certification in a recognized anger management intervention technique, such as MANDT or CAPE, must be present in the group. Thirty minutes of individual therapy and/or family therapy may be provided in lieu of one hour of group rehabilitative treatment.

(4) **Family therapy.** ~~The Provider Agency~~ provider agency shall provide family therapy as indicated ~~by~~ on the resident's individual treatment plan. Family therapy is an interaction between a Mental Health Professional as defined in OAC 317:30-5-240(c) and the family member(s) designated ~~by~~ on the treatment plan. The interaction is intended to facilitate behavioral, emotional, or psychological change and promote understanding through ~~skills~~ of successful communication ~~skills~~. Family therapy shall be provided for a minimum of four 30-minute sessions per month. The Agency shall:

- (A) ~~Work work~~ with the caretaker to whom the resident will be discharged, as identified by the DHS/OJA local worker- ;
- (B) ~~Seek seek~~ to support and enhance the child's relationships with nuclear and appropriate extended family members, if the DHS/OJA plan for the child indicates family reunification (~~nuclear and appropriate extended~~); ;
- (C) ~~Arrange arrange~~ for and encourage regular contact and visitation between children and their parents and other family members as specified in the treatment plan- ;
- (D) ~~Seek seek~~ to involve the child's ~~parents~~ parents/legal guardian in treatment team meetings, plans

and decisions and to keep them informed of the child's progress in the program. :

(E) ~~Provide~~ provide consultation to the residential foster ~~parent~~ care parents;

(F) ~~Provide~~ provide regular support and technical assistance to residential foster parents in their implementation of the treatment plan and with regard to other responsibilities they undertake. Fundamental components of such technical assistance will be the design or revision of in-home treatment strategies including proactive goal-setting and planning, and the provision of ongoing child-specific skills training and problem-solving in the home during home visits. Other types of support and supervision should include emotional support and relationship-building, the sharing of information and general training to enhance professional development, assessment of the youth's progress, observation/assessment of family interactions and stress, and assessment of safety issues. Residential foster parents and their biological children shall have access to counseling and therapeutic services arranged by the ~~Provider Agency~~ provider agency for personal issues/problems caused or exacerbated by their work as residential foster parents. Such issues may include, for example, marital stress, or abuse of their own child(ren) by a child placed in their care by the ~~Provider Agency~~ provider agency.

(5) **Substance abuse/chemical dependency education, prevention, and therapy.** The ~~Provider Agency~~ provider agency shall provide substance abuse/chemical dependency therapy for all residents who are identified by diagnosis or documented social history as having emotional or behavioral problems directly related to substance abuse ~~and or~~ and/or chemical dependency. If a resident is identified as requiring substance abuse/chemical dependency therapy, the ~~Provider Agency~~ provider agency shall provide age appropriate substance abuse/chemical dependency therapy. The modalities employed are provided in order to begin, maintain and enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. For those clients identified above, substance abuse/chemical dependency therapy must be provided a minimum of two (2) one-hour sessions per month. In the case a resident who has no identifiable emotional or behavioral problem directly related to substance abuse and or chemical dependency, residents must be provided age appropriate education and prevention activities. These may include self-esteem enhancement, violence alternatives, communication skills or other skill development curriculums. For clients who do not need substance ~~and or~~ and/or chemical dependency therapy, a minimum of two (2) hours of education ~~and or~~ and/or prevention therapy ~~a month~~ per three month period is required.

(6) **Basic living skills redevelopment.** The ~~Provider Agency~~ provider agency shall provide goal directed activities for each resident to restore, retain, and improve

those basic skills necessary to independently function in a family or community. Basic living skills redevelopment ~~will be~~ are daily activities that are age appropriate and relevant to the goals of the treatment plan. This may include, but is not limited to, food planning and preparation, maintenance of personal hygiene and living environment, household management, personal and household shopping, community awareness and familiarization with community resources, mobility skills, and job application and retention skills. Basic living skill redevelopment therapy must occur a minimum of 30 minutes each day.

(7) **Social skills redevelopment.** The ~~Provider Agency~~ provider agency shall provide goal directed activities for each resident to restore, retain and improve the self help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These will be daily activities that are age appropriate, culturally sensitive and relevant to the goals of the individual treatment plan. These may include self-esteem enhancement, violence alternatives, communication skills or other related skill development curriculums approved by the ~~Provider Agency~~ provider agency. Social skill redevelopment therapy must occur a minimum of two (2) 30-minute activities each day.

(8) **Crisis behavior management and redirection.** The ~~Provider Agency~~ provider agency shall provide crisis/behavior redirection by agency staff as needed 24 hours ~~a~~ per day, 7 days per week. The Agency shall ensure staff availability to respond to the residential foster parents in a crisis to stabilize residents' behavior and prevent placement disruption.

(9) **Discharge planning.** The provider agency shall develop a discharge plan for each resident. The discharge plan must be individualized, child-specific and include an after care plan that is appropriate to the resident's needs and in place at the time of discharge. The plan for children in parental custody must include, when appropriate, reunification plans with the parent(s)/legal guardian. The plan for children who remain in the custody of the Department of Human Services or the Office of Juvenile Affairs shall be developed in collaboration with the case worker and in place at the time of discharge. The discharge plan should include at a minimum, recommendations for continued treatment services, educational services, and other appropriate community resources. Discharge planning provides a transition from foster care placement into a lesser restrictive setting within the community.

**317:30-5-745. Documentation of records**

All services must be reflected by documentation in the records including the date the service was provided, the beginning and ending time the service was provided, the location in which the service was provided, a description of the resident's response to the service and whether the service provided was an individual, group or family session, group rehabilitative treatment, social skills (re)development, basic living skills

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(re)development, ~~or~~ crisis behavior management and redirection, or discharge planning.

[OAR Docket #03-660; filed 4-16-03]

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

[OAR Docket #03-658]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Client Services

Part 9. Service Provisions

317:40-5-103 [NEW]

(Reference APA WF # 02-18B)

### AUTHORITY:

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 5006 of Title 63 of Oklahoma Statutes; Section 1415.1 of Title 10 of Oklahoma Statutes

### DATES:

#### Comment period:

December 16, 2002 through January 15, 2003

#### Public hearing:

None held or requested

#### Adoption:

February 13, 2003

#### Submitted to Governor:

February 18, 2003

#### Submitted to House:

February 18, 2003

#### Submitted to Senate:

February 18, 2003

#### Gubernatorial approval:

April 3, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 11, 2003

#### Final adoption:

April 11, 2003

#### Effective:

May 27, 2003

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 5. Client Services

Part 9. Service Provisions

317:40-5-103. [NEW]

#### Gubernatorial approval:

October 8, 2002

#### Register publication:

20 Ok Reg 165

#### Docket number:

02-1455

(Reference APA WF # 02-18B)

### INCORPORATIONS BY REFERENCE:

N/A

### ANALYSIS:

Developmental Disabilities Services rules are revised to clarify transportation service availability in the Home and Community-Based Waivers for persons with developmental disabilities. Rules are being established to clarify conditions under which transportation services must be provided. New rules will distinguish among non-adapted transportation, adapted transportation, and public transportation. Revisions will provide guidelines for determining whether a person needs adapted transportation as well as establishing safer standards for transportation providers. Transportation services that are not covered will be specified. In addition, rules will establish

procedures for review and authorization of higher amounts of transportation service. Rule revisions are needed in order to clarify transportation service availability for individuals who receive services through the DDSD Home and Community-Based Waivers.

### CONTACT PERSON:

Joanne Terlizzi at 522-7272

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 MAY 27, 2003:

## SUBCHAPTER 5. CLIENT SERVICES

### PART 9. SERVICE PROVISIONS

#### 317:40-5-103. Transportation

(a) General Information. Transportation services include acquisition of, and payment for the use of, adapted, non-adapted, and public transportation.

(1) Transportation is provided to promote inclusion in the community, access to programs and services, and participation in activities to enhance community living skills.

(2) Services include, but are not limited to, transportation to and from medical appointments, work or employment services, recreational activities, and other community activities within the number of miles authorized in the Plan of Care.

(A) Adapted or non-adapted transportation is provided for each eligible person; or

(B) Public transportation is provided up to a maximum of \$5,000 per Plan of Care year. For the purposes of this Section, public transportation is defined as:

(i) public transportation services, such as an ambulance when medically necessary, a bus, or a taxi; or

(ii) a transportation program operated by the service recipient's employment services or day services provider.

(3) Services are provided to eligible individuals in accordance with the person's Plan of Care.

(4) Transportation services may be provided when there are insufficient supports to provide transportation.

(5) Authorization of Transportation Services is based on:

(A) Team consideration, in accordance with OAC 340:100-5-52, of the unique needs of the person and the most cost effective type of transportation services that meets the individual's need, in accordance with subsection (d) of this Section;

(B) the person's participation in Waiver services; and

(C) the scope of the transportation program as explained in this section.

(b) **Standards for transportation providers.** All drivers must have a valid and current Oklahoma drivers license and vehicle(s) must meet applicable local and state requirements for vehicle licensure, inspection, insurance and capacity.

(1) The provider must ensure that any vehicle used to transport individuals:

- (A) meets the needs of the service recipient;
- (B) is maintained in a safe condition;
- (C) has a current vehicle tag; and
- (D) is operated in accordance with local, state, and federal law, regulation, and ordinance.

(2) The provider maintains liability insurance in an amount sufficient to pay for injuries or loss to persons or property occasioned by negligence or malfeasance by the agency, its agents, or employees.

(3) The transportation provider must adequately maintain equipment installed to provide supports for individuals.

(4) Providers must maintain documentation fully disclosing the extent of services furnished that specifies:

- (A) the service date;
- (B) the odometer mileage reading;
- (C) the name of the service recipient transported;
- (D) the purpose of the trip; and
- (E) the starting point and destination.

(c) **Services not covered.** Services that cannot be claimed as transportation services include:

- (1) services not approved by the Team;
- (2) services not authorized by the Plan of Care;
- (3) trips that have no specified purpose or destination;
- (4) trips for provider or staff convenience;
- (5) transportation provided by the person receiving services or a family member of the person receiving services;

(A) The Team may authorize a family member to provide:

- (i) transportation to the service recipient's work or employment services; and
- (ii) transportation provided in accordance with OAC 317:40-5-5 or OAC 317:40-5-55.

(B) For the purposes of this Section, a family member is defined as a:

- (i) spouse;
- (ii) mother or father of a minor child; or
- (iii) mother, father, sister, brother, or child, including those of in-law or step relationship, living in the same household;

(6) trips when the individual receiving services is not in the vehicle;

(7) transportation claimed for more than one service recipient per vehicle at the same time or for the same miles, except public transportation;

(8) transportation outside the State of Oklahoma unless:

- (A) the transportation is provided to access the nearest available medical or therapeutic service; or
- (B) advance written approval is given by the DDS Area Manager or designee;

(9) services which are mandated to be provided by the public schools pursuant to the Individuals with Disabilities Education Act;

(10) transportation that occurs during the performance of the service recipient's paid employment, even if the employer is a contract provider.

(d) **Assessment and Team process.** At least annually, the Team addresses the person's transportation needs. The Team determines the most appropriate means of transportation based on the:

- (1) present needs of the person receiving services;
- (2) person's ability to access public transportation services; and
- (3) the availability of other transportation resources including family, neighbors, friends, and community agencies.

(e) **Adapted Transportation.** Adapted transportation provides transportation in modified vehicles or vehicles specifically procured to meet medical or behavioral needs of the service recipient which cannot be met with the use of a standard passenger vehicle. Vehicle modifications that may be needed include, but are not limited to, wheelchair safe travel systems, wheelchair lifts, raised roofs and doors, and exterior mounted wheelchair or scooter carriers.

(1) The Team determines if the person needs adapted transportation according to:

- (A) the person's need for physical support when sitting;
- (B) the person's need for physical assistance during transfers from one surface to another;
- (C) the portability of the individual's wheelchair;
- (D) associated health problems the individual may have;
- (E) behavioral issues related to vehicle travel; and
- (F) the needs of the individual only. The needs of other individuals living in the same household are considered separately.

(2) The transportation provider and the equipment vendor ensure that requirements of the Americans with Disabilities Act are met when Team-recommended vehicle modifications are installed.

(3) The transportation provider ensures that all staff assisting with transportation have been trained according to the requirements specified by the Team and the equipment manufacturer.

(4) The adapted transportation rate is not paid when a vehicle has been adapted with funds from the HCBWS program.

(f) **Authorization of transportation services.** The authorization limitations given in this subsection include the total of all transportation units on the Plan of Care, not just the units authorized for the residential setting identified.

(1) The Case Manager may include in the Plan of Care for a person receiving:

- (A) daily living supports, as defined in OAC 317:40-5-150, up to 12,000 units of adapted or non-adapted transportation per Plan of Care year;

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(B) specialized foster care, as defined in OAC 317:40-5-50, no transportation units, since 30 miles per day are included in the specialized foster care rate;

(C) group home services, as defined in OAC 340:100-6-1, up to 12,000 units of adapted or non-adapted transportation per Plan of Care year;

(D) agency companion services, as defined in OAC 317:40-5-3, up to 12,000 units of adapted or non-adapted transportation per Plan of Care year; or

(E) services in his or her own home or his or her family's home, up to 12,000 units of adapted or non-adapted transportation per Plan of Care year.

(2) The Case Management Supervisor may include in the Plan of Care up to 14,400 miles per Plan of Care year for people receiving daily living supports, agency companion services, or services in the person's own home or family home.

(3) The DDS Service Authorization Unit may approve written requests for:

(A) transportation services in excess of 14,400 miles per Plan of Care year in extenuating situations when person-centered planning has identified specific needs which require additional transportation for a limited period; or

(B) any combination of public transportation services with adapted or non-adapted transportation.

*[OAR Docket #03-658; filed 4-16-03]*

## TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 25. ENTRIES AND DECLARATIONS

*[OAR Docket #03-640]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULE:

325:25-1-19. Deadline for arrival of entered horses [AMENDED]

### AUTHORITY:

75 Oklahoma Statutes §§302, 305, and 307; Title 3A O.S., §204(A); Oklahoma Horse Racing Commission

### DATES:

#### Comment Period:

October 1, 2002-November 1, 2002

#### Public Hearing:

November 1, 2002

#### Adoption:

November 14, 2002

#### Submitted to Governor:

November 21, 2002

#### Submitted to House:

November 21, 2002

#### Submitted to Senate:

November 21, 2002

#### Gubernatorial approval:

December 20, 2002

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

### Final Adoption:

March 25, 2003

### Effective:

May 27, 2003

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATED BY REFERENCE:

n/a

### ANALYSIS:

Amendment to Rule 325:25-1-19 changes the brand name of the drug, Furosemide, from Lasix to Salix for equine use in compliance with an industry-wide change.

### CONTACT PERSON:

Bonnie Morris, Assistant to the Administrator, Oklahoma Horse Racing Commission, Shepherd Mall, 2614 Villa Prom, Oklahoma City, OK 73107, (405) 943-6472

**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 MAY 27, 2003:**

### 325:25-1-19. Deadline for arrival of entered horses

All horses scheduled to compete in a race must be present within the enclosure no later than one (1) hour prior to their scheduled race or earlier if required by the organization license or to comply with Commission Furosemide (~~Lasix~~ **Salix**) medication rules. An organization licensee shall provide an adequate stall for a horse which is required to arrive more than one (1) hour prior to post time for the horse's scheduled race. Horses not within the enclosure by their deadline may be scratched and the Trainer subject to fine and/or suspension.

*[OAR Docket #03-640; filed 4-15-03]*

## TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 35. GENERAL CONDUCT

*[OAR Docket #03-641]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULE:

325:35-1-5. Trainer responsibility [AMENDED]

### AUTHORITY:

75 Oklahoma Statutes §§302, 305, and 307; Title 3A O.S., §204(A); Oklahoma Horse Racing Commission

### DATES:

#### Comment Period:

October 1, 2002-November 1, 2002

#### Public Hearing:

November 1, 2002

#### Adoption:

November 14, 2002

#### Submitted to Governor:

November 21, 2002

#### Submitted to House:

November 21, 2002

#### Submitted to Senate:

November 21, 2002

#### Gubernatorial approval:

December 20, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final Adoption:**

March 25, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATED BY REFERENCE:**

n/a

**ANALYSIS:**

Amendment to Rule 325:35-1-5 changes the brand name of the drug, Furosemide, from Lasix to Salix for equine use in compliance with an industry-wide change.

**CONTACT PERSON:**

Bonnie Morris, Assistant to the Administrator, Oklahoma Horse Racing Commission, Shepherd Mall, 2614 Villa Prom, Oklahoma City, OK 73107, (405) 943-6472

**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 MAY 27, 2003:**

**325:35-1-5. Trainer responsibility**

(a) The Trainer is presumed to know the rules of racing and is responsible for the condition, soundness, and eligibility of the horses s/he enters in a race. The Trainer shall conduct his/her business of training racehorses with reasonable care and skill and in a humane manner, and with due regard to the interests of his/her owners and to the safety of employees and agents and of the horses in his/her care. Should the chemical analysis, urine or otherwise, taken from a horse under his/her supervision show the presence of any drug or medication of any kind or substance, whether drug or otherwise, regardless of the time it may have been administered, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the Trainer or person or persons under his/her supervision having care or custody of such horse. At the discretion of the Stewards or Commission, the Trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both. Under the provisions of this Section, the Trainer is also responsible for any puncture mark on any horse s/he enters in a race, found by the Stewards upon recommendation of the Racing or Official Veterinarian to evidence injection by syringe. If the Trainer cannot be present on race days s/he shall designate an Assistant Trainer. Such designation shall be made prior to time of entry, unless otherwise approved by the Stewards. Failure to fully disclose the actual Trainer of a horse participating in an approved race shall be grounds to disqualify the horse and subject the actual Trainer to possible disciplinary action by the Stewards or the Commission. Designation of an Assistant Trainer shall not relieve the Trainer's absolute responsibility for the conditions and eligibility of the horse, but shall place the Assistant Trainer under such absolute responsibility also. Willful failure on the part of the Trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the

horse involved; and the matter shall be referred to the Stewards for further action.

(b) In addition to the responsibilities of (a) of this Section, a Trainer has the following specific responsibilities:

- (1) Knowledge of medication rules;
- (2) Knowledge of medication status of all horses in his/her care;
- (3) Knowledge of Furosemide (~~Lasix~~ **Salix**) use rules;
- (4) To register all horses in his/her care with the Racing Secretary;
- (5) To ensure that no injectable substances, hypodermic needles, syringes, or electrical or mechanical device (other than the ordinary whip or approved twitch) which may or can be used for the purpose of stimulating or depressing a horse or affecting its speed at any time are in his/her possession; in the possession of employees; or in automobiles; or in sleeping, storage or stable areas owned by or assigned to that Trainer or Trainer's employees;
- (6) Proper entering and eligibility of all horses in his/her care;
- (7) Guard horses in his/her care;
- (8) Make any declaration or scratch of an entered horse in his/her care;
- (9) Bill and account for fees and services rendered on behalf of any horse in his/her care to the appropriate Owner or Owners.
- (10) To instruct and determine the training regimen of all horses in his/her care and entered in any race.

(c) No Trainer duty or responsibility, whether listed in (a) or (b) of this Section or not, may be assigned to any person who is ineligible to hold a license or who is under suspension in this or any other racing jurisdiction.

(d) No licensed Trainer shall assume any of the responsibilities described in this Section for a horse not under his/her active care, supervision or custody.

[OAR Docket #03-641; filed 4-15-03]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 45. MEDICATION AND EQUINE TESTING PROCEDURES**

[OAR Docket #03-642]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- 325:45-1-2. Definitions [AMENDED]
- 325:45-1-4. Drugs or Medications [AMENDED]
- 325:45-1-5. Power to Have Tested [AMENDED]
- 325:45-1-6. Authorized Medication [AMENDED]
- 325:45-1-7. Authority to Test Sample [AMENDED]
- 325:45-1-8. Furosemide (~~Lasix~~ **Salix**) Use With Detention Barn [AMENDED]
- 325:45-1-9. Furosemide (~~Lasix~~ **Salix**) Use Without Detention Barn [AMENDED]
- 325:45-1-10. Conditional Furosemide (~~Lasix~~ **Salix**) Use [AMENDED]
- 325:45-1-11. Trainer Responsibility - Furosemide (~~Lasix~~ **Salix**) [AMENDED]
- 325:45-1-12. Bleeder List [AMENDED]

# Permanent Final Adoptions

325:45-1-15. Equine Drug Testing Laboratory Reports [AMENDED]

**AUTHORITY:**

75 Oklahoma Statutes §§302, 305, and 307; Title 3A O.S., §204(A); Oklahoma Horse Racing Commission

**DATES:**

**Comment Period:**

October 1, 2002-November 1, 2002

**Public Hearing:**

November 1, 2002

**Adoption:**

November 14, 2002

**Submitted to Governor:**

November 21, 2002

**Submitted to House:**

November 21, 2002

**Submitted to Senate:**

November 21, 2002

**Gubernatorial approval:**

December 20, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final Adoption:**

March 25, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATED BY REFERENCE:**

n/a

**ANALYSIS:**

Amendments to Rules 325:45-1-2, 325:45-1-4, 325:45-1-5, 325:45-1-6, 325:45-1-7, 325:45-1-8, 325:45-1-9, 325:45-1-10, 325:45-1-11, 325:45-1-12 and 325:45-1-15 change the brand name of the drug, Furosemide, from Lasix to Salix for equine use in compliance with an industry-wide change.

**CONTACT PERSON:**

Bonnie Morris, Assistant to the Administrator, Oklahoma Horse Racing Commission, Shepherd Mall, 2614 Villa Prom, Oklahoma City, OK 73107, (405) 943-6472

**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 MAY 27, 2003:**

**325:45-1-2. Definitions**

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Horse Racing Act [3A:200 et seq.]

"**Assistant trainer**" means a person qualified and licensed by the Commission as an Assistant Trainer.

"**Authorized agent**" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner in whose behalf the Agent will act. Said affidavit must be on file with the Commission.

"**Bleeder**" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.

"**Bleeder list**" means a tabulation of all bleeders which tabulation shall be maintained by the Commission.

"**Commissioner**" means a member of the Oklahoma Horse Racing Commission.

"**Conditions of a race**" means the qualifications which determine the eligibility of a horse to be entered in a race.

"**Controlled substance**" means any substance included in the five classification schedules of the Oklahoma Uniform Controlled Dangerous Substances Act.

"**Day**" means a 24-hour period ending beginning at midnight.

"**Drug (medication)**" means a substance foreign to the normal physiology of the horse.

"**Foreign substances**" means all substances except those which exist naturally in the untreated horse at normal physiological concentration and shall include but not be limited to all narcotics, stimulants, or depressants.

"**Horse**" means:

(A) any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;

(B) an entire equine male five years of age and older.

~~"**Lasix list**" means a tabulation of all horses which are authorized by the Official Veterinarian for race day use of Lasix (furosemide).~~

"**Medication**" means a substance other than food intended to affect the structure or any function of the body of a human or a horse.

"**Occupation license**" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"**Official Veterinarian**" means a person qualified and licensed by the Commission as Official Veterinarian.

"**Organization license**" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"**Owner**" means any person who holds in whole or in part, any right, title or interest in a horse or an organization licensee or any person who is a lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"**Prima Facie evidence**" means evidence that, until its effect is overcome by another evidence, will suffice as proof of fact in issue.

"**Preponderance of evidence**" means greater weight of evidence, or evidence which is more credible.

"**Program**" means the published listing of all contests and contestants for a specific performance.

"**Race**" means a contest between horses.

"**Race day**" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"**Racing Veterinarian**" means a person qualified and licensed by the Commission as Racing Veterinarian.

"**Restricted area**" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other

area designated restricted by the organization licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"Rules" means the rules adopted by the Commission to implement the provisions of the Act.

"Salix list" means a tabulation of all horses which are authorized by the Official Veterinarian for race day use of Salix (furosemide).

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Substantial evidence" means evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"Veterinarian" means a person licensed to practice veterinary medicine by the State of Oklahoma and licensed as a veterinarian by the Commission.

"Week" means a calendar week.

"Year" means a calendar year.

**325:45-1-4. Drugs or Medication**

Except as authorized by the provisions of this Chapter and Chapter 40 of this Title, no drug or medication shall be administered to any horse prior to or during any race. Presence of any drug or its metabolites or analogs, any substance foreign to the natural horse, or Furosemide (~~Lasix~~Salix) or Phenylbutazone exceeding the Commission-established tolerance level found in the testing sample of a horse participating in a Commission-sanctioned race may result in disqualification by the Stewards. When a horse is disqualified because of an infraction of this Section, except as provided in 325:45-1-9 and in 325:45-1-22, the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned.

**325:45-1-5. Power to have tested**

As a safeguard against the prohibited use of drugs, medication, and substances foreign to the natural horse, and against the use of Furosemide (~~Lasix~~Salix) or Phenylbutazone in excess of the Commission-approved tolerance level, a blood, urine or other acceptable sample shall be taken under the direction of the Official Veterinarian from the winner of every race and from such other horses as the Stewards or the Commission may designate [3A:208.11]. The costs of quantitative testing for Furosemide (~~Lasix~~Salix) and Phenylbutazone shall be the responsibility of the horse Owner.

**325:45-1-6. Authorized medication**

As authorized under the provisions of 3A O.S., §208.11, Furosemide (~~Lasix~~Salix) and Phenylbutazone are medications or drug substances that may be administered to a horse (treated horse), as prescribed in this Chapter, which is entered to compete in a race. Within limits established by the Commission, Furosemide (~~Lasix~~Salix), Phenylbutazone, their metabolites

or analogs are the only substances foreign to the normal physiology of the horse which may be present in a blood or urine test sample from a horse designated to have received a pre-race administration of Furosemide (~~Lasix~~Salix) or Phenylbutazone. Except under the instructions of the Official Veterinarian or Racing Veterinarian for the purpose of removing a horse from the Veterinarian's List or to facilitate the collection of a post-race urine sample, Furosemide (~~Lasix~~Salix) shall be permitted only after the Official Veterinarian has placed the horse on the Bleeder list and under the conditions as specified in 325:45-1-8, 325:45-1-9, and 325:45-1-10.

**325:45-1-7. Authority to test sample**

Prior to or following a race, a horse may be subjected to having a blood and/or urine sample taken at the direction of the Official Veterinarian to determine quantitative Furosemide (~~Lasix~~Salix) and Phenylbutazone levels and/or the presence of other drugs which may be contained in the blood or urine sample. [3A:204(A)(14); see also 3A:204.1B and 3A:208.11]

**325:45-1-8. Furosemide (~~Lasix~~Salix) use with detention barn**

The use of Furosemide (~~Lasix~~Salix) shall be permitted under the following circumstances:

- (1) Furosemide (~~Lasix~~Salix) shall be administered at the direction of the Official Veterinarian or his/her designee no less than four hours prior to post time of the race for which the horse is entered.
- (2) A horse qualified for a Furosemide (~~Lasix~~Salix) administration must report to the Detention Barn within time to comply with the four-hour administration requirement, as specified in (1) of this Section.
- (3) The dose administered shall not exceed 250 mg. nor may be less than 150 mg.
- (4) Administration must be controlled by using sealed vials and sterile disposable syringes and needles. Multiple dose vials shall be preserved in safekeeping by the Official Veterinarian for the practitioners between administrations.
- (5) After treatment, the horse shall be required by the Commission to remain in the Detention Barn in the care, custody, and control of the Trainer or his/her designated representative under track and/or Commission security supervision until called to the saddling paddock.
- (6) All costs incurred with the administration, injection, and blood and/or urine testing of or for Furosemide (~~Lasix~~Salix) shall be at the expense of the horse Owner.
- (7) Such other conditions as may be approved by the Commission from time to time, which conditions shall be posted at the office of the Official Veterinarian.

**325:45-1-9. Furosemide (~~Lasix~~Salix) use without detention barn**

The use of Furosemide (~~Lasix~~Salix) shall be permitted under the following conditions:

- (1) The Commission has established a post race plasma concentration level not to exceed 50 ng/ml of Furosemide (~~Lasix~~Salix).

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(2) Any treated horse which finished first, second or third shall be subject to having a blood and/or urine sample taken at the direction of the Official Veterinarian to determine the quantitative Furosemide (~~Lasix~~Salix) levels and/or the presence of other drugs which may be present in the blood or urine sample. The cost of such testing shall be at the expense of the Owner.

(3) The permitted quantitative Furosemide (~~Lasix~~Salix) level (tolerance level) shall not exceed the tolerance level established by Commission directive [3A:205.2(H)]. Said directive shall be conspicuously posted within the enclosure by the Official Veterinarian.

(4) The Stewards shall impose a fine of Two Hundred Fifty Dollars (\$250.00) for any Trainer for violation of paragraph (3) of this Section for a first time offense. For a second time offense for violation of paragraph (3) of this Section, the Stewards shall impose a fine of Two Hundred Fifty Dollars (\$250.00) if it is a different horse; and if the second time offense is on the same horse, the Stewards shall impose a fine of One Thousand Dollars (\$1,000.00) unless the Trainer was not notified of the first offense prior to the horse running the second time, in which case the Stewards shall impose a fine of Five Hundred Dollars (\$500.00). The Stewards shall impose a fine of Two Thousand Five Hundred Dollars (\$2,500.00) and suspend for one year the license of any person for a third time violation of paragraph (3) of this Section involving the same horse. When a Trainer has a third violation involving the same horse, the horse shall be disqualified and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned unless the Trainer was not notified of the second offense prior to the horse running the third time, in which case the Stewards shall impose a fine of One Thousand Dollars (\$1,000.00).

(5) Any subsequent violation of paragraph (3) of this Section by any person shall be referred, with recommendation from the Stewards, to the Commission for disciplinary action.

### 325:45-1-10. Conditional Furosemide (~~Lasix~~Salix) use

An organization licensee shall have the authority to restrict the use of Furosemide (~~Lasix~~ Salix), subject to Commission approval, in any race, category of racing, or race meeting. Any such proposed restriction shall be included in the organization licensee's application for license or application for race days and condition book.

### 325:45-1-11. Trainer responsibility - Furosemide (~~Lasix~~Salix)

Should the chemical analysis of the urine, blood, or other sample taken from a horse under the Trainer's supervision show that the drug Furosemide (~~Lasix~~Salix) is present in an amount exceeding the Commission-approved tolerance level, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the Trainer or person or persons under his/her supervision having care or custody of such horse.

At the discretion of the Stewards or Commission, the Trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both in accordance with this Chapter. If the Trainer cannot be present on race days, s/he shall designate an Assistant Trainer. Such designation shall be made prior to time of entry unless otherwise approved by the Stewards. Failure to fully disclose the actual Trainer of a horse participating in an approved race shall be grounds to disqualify the horse and subject the actual Trainer to possible disciplinary action by the Stewards or the Commission. Designation of an Assistant Trainer shall not relieve the Trainer's absolute responsibility for the conditions and eligibility of the horse but shall place the Assistant Trainer under absolute responsibility also. Willful failure on the part of the Trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred to the Stewards for further action.

### 325:45-1-12. Bleeder list

Furosemide (~~Lasix~~Salix) shall be administered for the control of bleeding to an entered horse on the Bleeder List. A horse may be placed on the Bleeder List under the following conditions:

(1) When such horse demonstrates visible external evidence of exercise-induced pulmonary hemorrhage or the existence of hemorrhage in the trachea post-exercise upon endoscopic examination, and such hemorrhage is sufficient to impair the ability of the horse to race safely. Such examination must be performed by an Oklahoma Horse Racing Commission-licensed veterinarian practicing within the enclosure, providing the bleeding occurred at a licensed Oklahoma Horse Racing Commission race-track. The Racing or Official Veterinarian may be present during the examination.

(2) A horse with a Bleeder Certificate from another jurisdiction which employs bleeder qualification criteria deemed satisfactory to the Commission, as specified in (1) of this Section, and such horse is approved to participate by the Official Veterinarian. Once a horse is placed on the Bleeder List, the Owner will receive a Bleeder Certificate signed by the practicing veterinarian and the Official Veterinarian. A horse shall be removed from the ~~Lasix~~Salix List only by the Official Veterinarian, who shall provide written notification to the Stewards of the reason for removal.

(3) A horse whose most recent past performance line indicates the horse has been participating on Furosemide (~~Lasix~~Salix) may be allowed to continue to use ~~Lasix~~Salix. No Bleeder Certificate shall be issued.

### 325:45-1-15. Equine drug testing laboratory reports

A finding by a chemist at a Commission-approved equine drug testing laboratory that a test sample taken from a horse contains a drug or its metabolites or analogs, or any substance foreign to the natural horse or Furosemide (~~Lasix~~Lasix) or

Phenylbutazone in excess of the Commission-approved tolerance level shall be prima facie evidence that such has been administered to the horse either internally or externally in violation of these rules. It is presumed that the sample of urine, blood or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question; its integrity is preserved; that all accompanying procedures of collection, preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which it was entered, with the burden on the Trainer, Assistant Trainer and/or other responsible person to prove otherwise at any hearing in regard to the matter conducted by the Stewards or the Commission.

[OAR Docket #03-642; filed 4-15-03]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 75. OKLAHOMA-BRED PROGRAM**

[OAR Docket #03-643]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULE:**

325:75-1-3. Definition of accredited Oklahoma-bred [AMENDED]

**AUTHORITY:**

75 Oklahoma Statutes §§302, 305, and 307; Title 3A O.S., §204(A); Oklahoma Horse Racing Commission

**DATES:**

**Comment Period:**

October 1, 2002-November 1, 2002

**Public Hearing:**

November 1, 2002

**Adoption:**

November 14, 2002

**Submitted to Governor:**

November 21, 2002

**Submitted to House:**

November 21, 2002

**Submitted to Senate:**

November 21, 2002

**Gubernatorial approval:**

December 20, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final Adoption:**

March 25, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATED BY REFERENCE:**

n/a

**ANALYSIS:**

Amendment to Rule 325:75-1-3, Stallion, as recommended by the Oklahoma-Bred Advisory Council, changes the definition of Stallion to allow a stallion owner to provide the required documentation for a breeding season for a stallion to the Commission Inspector upon written notice rather than within eighteen months of the end of that year; and allow a stallion owner to submit the required stallion breeding report or other acceptable verification so as to be received by the Commission no later than ten days after written request.

**CONTACT PERSON:**

Bonnie Morris, Assistant to the Administrator, Oklahoma Horse Racing Commission, Shepherd Mall, 2614 Villa Prom, Oklahoma City, OK 73107, (405) 943-6472

**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 MAY 27, 2003:**

**325:75-1-3. Definition of accredited Oklahoma-bred**

As used in this Chapter, an accredited Oklahoma-Bred horse shall mean an Arabian horse, Appaloosa horse, Quarter Horse, Paint horse, Pinto horse, Thoroughbred horse, or a horse of any other breed not otherwise specified in the Act, and which horse meets the requirements below:

(1) **Stallion.** An accredited Oklahoma-Bred stallion is one that is permanently domiciled in Oklahoma, stands for service in Oklahoma, and is registered in the Oklahoma-Bred Program permanent stallion registry. An Oklahoma-Bred that is accredited as racing stock is not registered as breeding stock in the registry. For resulting foals to be eligible for accreditation as an Oklahoma-Bred, the stallion must be registered in the Oklahoma-Bred Program permanent stallion registry prior to the service that produces the resulting foal. Except for those foals that are sired by non-accredited stallions which are eligible for registration in the Oklahoma-Bred Program, any foals conceived prior to the stallion being registered in the Oklahoma-Bred Program permanent stallion registry will not be eligible for accreditation. Domicile begins when the stallion's registration is filed with the Oklahoma-Bred Registering Agency and such registration is in substantial compliance with the registration requirements of the registry. A stallion's accreditation shall be forfeited if the stallion leaves Oklahoma for reasons other than racing, medical treatment, performance, or approved departure for breeding purposes in another hemisphere. Approved departure for breeding purposes shall be granted by the Registering Agency upon written notification by the stallion owner or manager as to the destination of the stallion, the duration of the absence of the stallion, and the date the stallion will return to Oklahoma. The stallion must return to Oklahoma to resume his domicile prior to February 1 of the subsequent year. If a stallion loses his accreditation, to become eligible for future stallion awards a stallion must re-register in the Oklahoma-Bred Program, including payment of required fees, and resume his domicile within Oklahoma. Except for late applications, the stallion's registration must be filed with the Oklahoma-Bred Registering Agency by February 1 of that breeding season. Late applications will be accepted by the Oklahoma-Bred Registering Agency after February 1 and through June 30 of that breeding season at twice the normal fee. If a stallion stands for service outside of Oklahoma during the calendar year in which the foal(s) was conceived, any foal conceived after registration of the stallion in the

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Oklahoma-Bred permanent stallion registry and while the accredited stallion was standing in Oklahoma and which otherwise is eligible for accreditation may be registered in the Oklahoma-Bred Program upon presentation of acceptable documentation reflecting that the service producing the foal occurred while the accredited stallion was standing in Oklahoma. The owner of a stallion that stood for service outside of Oklahoma during the calendar year shall be eligible for stallion awards from those breedings that occurred while the accredited stallion stood in Oklahoma. The Commission may require a copy of the stallion breeding report submitted to the official breed registry, or other acceptable verification approved by the Commission, for any breeding season during which the stallion is standing as an accredited Oklahoma-Bred stallion. Failure to provide the required documentation for any year shall result in the stallion owner being ineligible for stallion awards for all foals resulting from that breeding season unless the required documentation is received by the Commission ~~within eighteen months of the end of that year~~ Inspector upon written notice. Further, foals shall be ineligible for accreditation unless the required stallion breeding report or other acceptable verification is received by the Commission not later than ~~August 1 of the following calendar year~~ ten (10) days after written request. The owner of an accredited Oklahoma-Bred stallion (for the purpose of qualifying for stallion awards) is the owner or lessee of record at the time the offspring is conceived.

(2) **Broodmare.** An accredited Oklahoma-Bred broodmare is one that is permanently domiciled in Oklahoma and is registered in the Oklahoma-Bred Program permanent broodmare registry. An Oklahoma-Bred that is accredited as racing stock is not registered as breeding stock in the registry. Domicile begins when the broodmare's registration is filed with the Oklahoma-Bred Registering Agency and such registration is in substantial compliance with the registration requirements of the registry. Except for late applications and hardship applications, the broodmare's registration must be filed with the Oklahoma-Bred Registering Agency by December 31 of the year prior to foaling. An accredited Oklahoma-Bred broodmare may be shipped out of Oklahoma to be served by a non-accredited stallion, provided she is returned to Oklahoma to resume her domicile not later than August 15 of that year. Failure of the accredited broodmare to return to Oklahoma to resume her domicile not later than August 15 shall result in the resultant foal being ineligible for registration in the Oklahoma-Bred Program. Further, except in the case of an accredited Thoroughbred mare carrying a Thoroughbred foal, which must return to Oklahoma to resume her domicile not later than August 15 of the year prior to foaling an accredited Oklahoma-Bred broodmare that returns to Oklahoma after August 15 shall not be eligible to produce a foal that is eligible for registration in the Oklahoma-Bred Program unless she returns to Oklahoma to resume her domicile not later than December 31 of the year prior to being bred to an accredited Oklahoma-Bred stallion and that written notice of such

return has been received by the Oklahoma-Bred Registering Agency. The Commission may request a copy of the foal report submitted to the official breed registry for any accredited Oklahoma-Bred broodmare. The owner of an accredited Oklahoma-Bred Thoroughbred broodmare (for purposes of qualifying for broodmare awards) is the owner or lessee of record at the time of foaling. As to all breeds other than Thoroughbred, the owner of an accredited Oklahoma-Bred broodmare (for purposes of qualifying for broodmare awards) is the owner or lessee of record at the time of conception.

(3) **Hardship application.** Notwithstanding other provisions of this Section, a mare registered in the Oklahoma-Bred Program as racing stock (with proper Oklahoma-Bred stamp) which has not been registered as a broodmare in the Oklahoma-Bred permanent broodmare registry prior to foaling a foal that would otherwise be eligible for registration in the Oklahoma-Bred Program may be registered in the Oklahoma-Bred permanent broodmare registry upon payment of the normal registration fee plus an additional \$200.00 and further provided all other qualifications and requirements for registration as a broodmare in the Oklahoma-Bred permanent broodmare registry are met. The Commission may require proof that all requirements for registration have been met. In such event, any foal out of that broodmare that would otherwise be eligible for registration as racing stock in the Oklahoma-Bred Program will be eligible for registration upon registration of the broodmare in the Oklahoma-Bred permanent broodmare registry. Acceptance of a foal application under these circumstances by the official Registering Agency is subject to the broodmare being registered under a hardship application in the Oklahoma-Bred permanent broodmare registry within sixty (60) days from receipt of notice by the broodmare owner that the broodmare was not registered in the Oklahoma-Bred permanent broodmare registry. The fee to register the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Oklahoma-Bred Registering Agency received the racing stock application. Failure to register a broodmare under a hardship application within sixty (60) days from receipt of notice from the official Registering Agency that the broodmare was accredited as racing stock in the Oklahoma-Bred Program and not as a broodmare in the Oklahoma-Bred permanent broodmare registry, will result in the rejection of any pending racing stock applications for foals out of that mare.

(4) **Racing stock.** An accredited Oklahoma-Bred racehorse is one that foaled in Oklahoma, and meets the following requirements:

(A) Thoroughbreds: Beginning with the foal crop of 2001 there will be two (2) classifications of Thoroughbred foals eligible for accreditation in the Oklahoma-Bred program. The category for those foals out of an accredited Oklahoma-Bred broodmare and by an accredited Oklahoma-Bred Stallion shall be classified as Oklahoma-Bred Conceived and Foaled. The second category for foals out of an accredited

Oklahoma-Bred broodmare and by a non-accredited stallion shall be classified as Oklahoma-Bred Foaled. Provided all other requirements are met, both classifications are eligible for accreditation and may compete in Oklahoma-Bred races.

(B) All Other Breeds: and is by an accredited Oklahoma-Bred stallion and out of an accredited Oklahoma-Bred broodmare, except that a foal out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion may receive accreditation in the Oklahoma-Bred racing stock registry provided all other requirements are met. In such event, to be eligible for accreditation, the next foal out of said broodmare presented for accreditation must be by an accredited Oklahoma-Bred stallion and meet all other requirements. Further, in no event can a broodmare produce accredited Oklahoma-Bred foals in succession that are by non-accredited stallions. Except for the initial foal registered in the Oklahoma-Bred Program, all accredited foals sired by non-accredited stallions must be preceded (by year of birth) in the registry by an accredited foal sired by an accredited stallion. An Oklahoma-Bred that is accredited as racing stock is not registered as breeding stock in the registry. The owner of an accredited Oklahoma-Bred racehorse (for the purpose of qualifying for added purse supplements) is the owner or lessee of record at the time of the race.

(5) **Late applications.**

(A) **Broodmare.** A broodmare may be registered in the Oklahoma-Bred permanent broodmare registry after December 31 of the year prior to foaling if:

- (i) the registration is submitted to the Oklahoma-Bred Registering Agency prior to foaling; and
- (ii) the broodmare is otherwise in substantial compliance with the registration requirements of the registry. Domicile must begin when the broodmare's registration is filed with the Oklahoma-Bred Registering Agency.

(B) **Stallion.** A stallion may be registered in the Oklahoma-Bred permanent stallion registry after February 1 and by June 30 and complete the current breeding season if the stallion is otherwise in substantial compliance with the registration requirements of the registry. Domicile must begin when the stallion's registration is filed with the Oklahoma-Bred Registering Agency.

(C) **Fee.** The fee to register a broodmare or stallion under a late application is twice the regular fee. The fee will not be refunded if the Commission rejects the application but will be applied to registration of the horse for the next ensuing year.

(6) **Domicile exception.** An Oklahoma-Bred broodmare or stallion may leave Oklahoma for an indefinite period of time for race or performance purposes or for medical treatment; however, the burden of proof relating to such race, performance, or medical treatment shall be

on the owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency upon request.

[OAR Docket #03-643; filed 4-15-03]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 75. OKLAHOMA-BRED PROGRAM**

[OAR Docket #03-644]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
325:75-1-3. Definition of accredited Oklahoma-bred [AMENDED]  
325:75-1-12. Registration requirements, categories and fees [AMENDED]

**AUTHORITY:**  
75 Oklahoma Statutes §§302, 305, and 307; Title 3A O.S., §204(A); Oklahoma Horse Racing Commission

**DATES:**  
**Comment Period:**  
December 3, 2002 to January 3, 2003

**Public Hearing:**  
January 3, 2003

**Adoption:**  
January 23, 2003

**Submitted to Governor:**  
January 23, 2003

**Submitted to House:**  
January 23, 2003

**Submitted to Senate:**  
January 23, 2003

**Gubernatorial approval:**  
March 5, 2003

**Legislative approval:**  
Failure of the Legislature to disapprove the rules resulted in approval on March 26, 2003

**Final Adoption:**  
March 26, 2003

**Effective:**  
May 28, 2003

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATED BY REFERENCE:**  
n/a

**ANALYSIS:**  
Amendment to Rule 325:75-1-3, Broodmare, as recommended by the Oklahoma-Bred Advisory Council, resolves unintended consequences of the current Broodmare definition when an accredited Oklahoma-Bred broodmare is sold and moved out-of-state and later purchased and returned to Oklahoma. Currently, reaccreditation upon return to Oklahoma is not an option.

In conjunction with the change proposed under Rule 325:75-1-3, Broodmare definition, the amendment to Rule 325:75-1-12, also recommended by the Oklahoma-Bred Advisory Council, establishes the registration deadlines and fee amounts for such reaccreditation.

**CONTACT PERSON:**  
Bonnie Morris, Assistant to the Administrator, Oklahoma Horse Racing Commission, Shepherd Mall, 2614 Villa Prom, Oklahoma City, OK 73107, (405) 943-6472

**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 MAY 28, 2003:**

## Permanent Final Adoptions

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### 325:75-1-3. Definition of accredited Oklahoma-bred

As used in this Chapter, an accredited Oklahoma-Bred horse shall mean an Arabian horse, Appaloosa horse, Quarter Horse, Paint horse, Pinto horse, Thoroughbred horse, or a horse of any other breed not otherwise specified in the Act, and which horse meets the requirements below:

(1) **Stallion.** An accredited Oklahoma-Bred stallion is one that is permanently domiciled in Oklahoma, stands for service in Oklahoma, and is registered in the Oklahoma-Bred Program permanent stallion registry. An Oklahoma-Bred that is accredited as racing stock is not registered as breeding stock in the registry. For resulting foals to be eligible for accreditation as an Oklahoma-Bred, the stallion must be registered in the Oklahoma-Bred Program permanent stallion registry prior to the service that produces the resulting foal. Except for those foals that are sired by non-accredited stallions which are eligible for registration in the Oklahoma-Bred Program, any foals conceived prior to the stallion being registered in the Oklahoma-Bred Program permanent stallion registry will not be eligible for accreditation. Domicile begins when the stallion's registration is filed with the Oklahoma-Bred Registering Agency and such registration is in substantial compliance with the registration requirements of the registry. A stallion's accreditation shall be forfeited if the stallion leaves Oklahoma for reasons other than racing, medical treatment, performance, or approved departure for breeding purposes in another hemisphere. Approved departure for breeding purposes shall be granted by the Registering Agency upon written notification by the stallion owner or manager as to the destination of the stallion, the duration of the absence of the stallion, and the date the stallion will return to Oklahoma. The stallion must return to Oklahoma to resume his domicile prior to February 1 of the subsequent year. If a stallion loses his accreditation, to become eligible for future stallion awards a stallion must re-register in the Oklahoma-Bred Program, including payment of required fees, and resume his domicile within Oklahoma. Except for late applications, the stallion's registration must be filed with the Oklahoma-Bred Registering Agency by February 1 of that breeding season. Late applications will be accepted by the Oklahoma-Bred Registering Agency after February 1 and through June 30 of that breeding season at twice the normal fee. If a stallion stands for service outside of Oklahoma during the calendar year in which the foal(s) was conceived, any foal conceived after registration of the stallion in the Oklahoma-Bred permanent stallion registry and while the accredited stallion was standing in Oklahoma and which otherwise is eligible for accreditation may be registered in the Oklahoma-Bred Program upon presentation of acceptable documentation reflecting that the service producing the foal occurred while the accredited stallion was standing in Oklahoma. The owner of a stallion that stood for service outside of Oklahoma during the calendar year shall be eligible for stallion awards from those breedings that occurred while the accredited stallion stood in Oklahoma.

The Commission may require a copy of the stallion breeding report submitted to the official breed registry, or other acceptable verification approved by the Commission, for any breeding season during which the stallion is standing as an accredited Oklahoma-Bred stallion. Failure to provide the required documentation for any year shall result in the stallion owner being ineligible for stallion awards for all foals resulting from that breeding season unless the required documentation is received by the Commission Inspector upon written notice. Further, foals shall be ineligible for accreditation unless the required stallion breeding report or other acceptable verification is received by the Commission not later than ten (10) days after written request. The owner of an accredited Oklahoma-Bred stallion (for the purpose of qualifying for stallion awards) is the owner or lessee of record at the time the offspring is conceived.

(2) **Broodmare.** An accredited Oklahoma-Bred broodmare is one that is permanently domiciled in Oklahoma and is registered in the Oklahoma-Bred Program permanent broodmare registry. An Oklahoma-Bred that is accredited as racing stock is not registered as breeding stock in the registry. Domicile begins when the broodmare's registration is filed with the Oklahoma-Bred Registering Agency and such registration is in substantial compliance with the registration requirements of the registry. Except for late applications and hardship applications, the broodmare's registration must be filed with the Oklahoma-Bred Registering Agency by December 31 of the year prior to foaling. An accredited Oklahoma-Bred broodmare may be shipped out of Oklahoma to be served by a non-accredited stallion, provided she is returned to Oklahoma to resume her domicile not later than August 15 of that year. Failure of the accredited broodmare to return to Oklahoma to resume her domicile not later than August 15 shall result in the resultant foal being ineligible for registration in the Oklahoma-Bred Program. Further, except in the case of an accredited Thoroughbred mare carrying a Thoroughbred foal, which must return to Oklahoma to resume her domicile not later than August 15 of the year prior to foaling an accredited Oklahoma-Bred broodmare that returns to Oklahoma after August 15 shall not be eligible to produce a foal that is eligible for registration in the Oklahoma-Bred Program unless she returns to Oklahoma to resume her domicile not later than December 31 of the year prior to being bred to an accredited Oklahoma-Bred stallion and that written notice of such return has been received by the Oklahoma-Bred Registering Agency. If a broodmare leaves the State of Oklahoma, terminating her domicile to produce foal(s) in a jurisdiction other than Oklahoma, that broodmare will not be eligible to produce subsequent foals for accreditation or earn broodmare awards for those foals until she returns to Oklahoma to re-establish her domicile and the appropriate fees are paid to re-register her in the Oklahoma-Bred Permanent Broodmare Registry. The Commission may request a copy of the foal report submitted to the official breed registry for any accredited Oklahoma-Bred broodmare. The

owner of an accredited Oklahoma-Bred Thoroughbred broodmare (for purposes of qualifying for broodmare awards) is the owner or lessee of record at the time of foaling. As to all breeds other than Thoroughbred, the owner of an accredited Oklahoma-Bred broodmare (for purposes of qualifying for broodmare awards) is the owner or lessee of record at the time of conception.

(3) **Hardship application.** Notwithstanding other provisions of this Section, a mare registered in the Oklahoma-Bred Program as racing stock (with proper Oklahoma-Bred stamp) which has not been registered as a broodmare in the Oklahoma-Bred permanent broodmare registry prior to foaling a foal that would otherwise be eligible for registration in the Oklahoma-Bred Program may be registered in the Oklahoma-Bred permanent broodmare registry upon payment of the normal registration fee plus an additional \$200.00 and further provided all other qualifications and requirements for registration as a broodmare in the Oklahoma-Bred permanent broodmare registry are met. The Commission may require proof that all requirements for registration have been met. In such event, any foal out of that broodmare that would otherwise be eligible for registration as racing stock in the Oklahoma-Bred Program will be eligible for registration upon registration of the broodmare in the Oklahoma-Bred permanent broodmare registry. Acceptance of a foal application under these circumstances by the official Registering Agency is subject to the broodmare being registered under a hardship application in the Oklahoma-Bred permanent broodmare registry within sixty (60) days from receipt of notice by the broodmare owner that the broodmare was not registered in the Oklahoma-Bred permanent broodmare registry. The fee to register the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Oklahoma-Bred Registering Agency received the racing stock application. Failure to register a broodmare under a hardship application within sixty (60) days from receipt of notice from the official Registering Agency that the broodmare was accredited as racing stock in the Oklahoma-Bred Program and not as a broodmare in the Oklahoma-Bred permanent broodmare registry, will result in the rejection of any pending racing stock applications for foals out of that mare.

(4) **Racing stock.** An accredited Oklahoma-Bred racehorse is one that foaled in Oklahoma, and meets the following requirements:

(A) **Thoroughbreds:** Beginning with the foal crop of 2001 there will be two (2) classifications of Thoroughbred foals eligible for accreditation in the Oklahoma-Bred program. The category for those foals out of an accredited Oklahoma-Bred broodmare and by an accredited Oklahoma-Bred Stallion shall be classified as Oklahoma-Bred Conceived and Foaled. The second category for foals out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion shall be classified as Oklahoma-Bred Foaled.

Provided all other requirements are met, both classifications are eligible for accreditation and may compete in Oklahoma-Bred races.

(B) **All Other Breeds:** and is by an accredited Oklahoma-Bred stallion and out of an accredited Oklahoma-Bred broodmare, except that a foal out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion may receive accreditation in the Oklahoma-Bred racing stock registry provided all other requirements are met. In such event, to be eligible for accreditation, the next foal out of said broodmare presented for accreditation must be by an accredited Oklahoma-Bred stallion and meet all other requirements. Further, in no event can a broodmare produce accredited Oklahoma-Bred foals in succession that are by non-accredited stallions. Except for the initial foal registered in the Oklahoma-Bred Program, all accredited foals sired by non-accredited stallions must be preceded (by year of birth) in the registry by an accredited foal sired by an accredited stallion. An Oklahoma-Bred that is accredited as racing stock is not registered as breeding stock in the registry. The owner of an accredited Oklahoma-Bred racehorse (for the purpose of qualifying for added purse supplements) is the owner or lessee of record at the time of the race.

(5) **Late applications.**

(A) **Broodmare.** A broodmare may be registered in the Oklahoma-Bred permanent broodmare registry after December 31 of the year prior to foaling if:

- (i) the registration is submitted to the Oklahoma-Bred Registering Agency prior to foaling; and
- (ii) the broodmare is otherwise in substantial compliance with the registration requirements of the registry. Domicile must begin when the broodmare's registration is filed with the Oklahoma-Bred Registering Agency.

(B) **Stallion.** A stallion may be registered in the Oklahoma-Bred permanent stallion registry after February 1 and by June 30 and complete the current breeding season if the stallion is otherwise in substantial compliance with the registration requirements of the registry. Domicile must begin when the stallion's registration is filed with the Oklahoma-Bred Registering Agency.

(C) **Fee.** The fee to register a broodmare or stallion under a late application is twice the regular fee. The fee will not be refunded if the Commission rejects the application but will be applied to registration of the horse for the next ensuing year.

(6) **Domicile exception.** An Oklahoma-Bred broodmare or stallion may leave Oklahoma for an indefinite period of time for race or performance purposes or for medical treatment; however, the burden of proof relating to such race, performance, or medical treatment shall be on the owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency upon request.

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## 325:75-1-12. Registration requirements, categories and fees

- (a) Except as provided in 325:75-1-3(5)(C), all broodmares must be registered in the permanent broodmare registry prior to foaling an Oklahoma-Bred eligible foal. All stallions must be registered in the permanent stallion registry prior to conceiving an Oklahoma-Bred eligible foal. Racing stock may register in the racing stock registry by December 31 of the year of the horse's birth with a fee of \$25.00. Other racing stock registering by June 1 of their yearling year must pay a \$50.00 fee. The registration fee is \$500.00 for all other racing stock registered through December 31 of the horse's three-year-old year. On or after January 1 of their four-year-old year, the registration fee shall be \$1,000.00. Broodmares may register in the broodmare registry by December 31 of the year prior to foaling with a fee of \$35.00. Broodmares registering under late applications but prior to foaling must pay a \$70.00 fee. Broodmares registering under hardship applications must pay \$235.00. Stallions may register in the stallion registry by February 1 of that breeding season with a fee of \$100.00. Stallions registering after February 1 and by June 30 of that breeding season must pay \$200.00.
- (b) The breeder or owner of an Oklahoma-Bred horse shall pay the fee required for registration in the following categories:
- (1) Permanent Stallion Registry by February 1 of Breeding Year - \$100.00
  - (2) Permanent Stallion Registry After February 1 and by June 30 of the Breeding Year - \$200.00
  - (3) Stallion Reaccreditation by February 1 of Breeding Year - \$100.00
  - (4) Stallion Reaccreditation After February 1 and by June 30 of the Breeding Year - \$200.00
  - (5) Permanent Broodmare Registry by December 31 of Year Prior to Foaling - \$35.00
  - (6) Permanent Broodmare Registry under Late Application - \$70.00
  - (7) Permanent Broodmare Registry under Hardship Application - \$235.00
  - (8) Broodmare Reaccreditation by December 31 prior to foaling - \$35.00
  - (9) Broodmare Reaccreditation after December 31 and prior to foaling - \$70.00
  - ~~(10)~~ Foals in Year of Birth - \$25.00
  - ~~(11)~~ Yearlings by June 1 of Yearling Year - \$50.00
  - ~~(12)~~ All Racing Stock After June 1 of Yearling Year through December 31 of Three-Year-Old Year - \$500.00
  - ~~(13)~~ All Racing Stock On or After January 1 of Four-Year-Old Year - \$1,000.00
  - ~~(14)~~ Transfer Fee - \$10.00
- (c) Paragraphs (1), (2), (3), (4), (5), (6), ~~and (7)~~, (8) and (9) of (b) of this Section are registries for breeding purposes only. Paragraphs ~~(8), (9), (10), and (11)~~, (12) and (13) of (b) of this Section are for racing purposes only.

[OAR Docket #03-644; filed 4-15-03]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 25. CHILD SUPPORT ENFORCEMENT DIVISION

[OAR Docket #03-728]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Scope, Applicability, and General Provisions  
340:25-1-1.1 [AMENDED]  
340:25-1-2.1 [AMENDED]  
Subchapter 5. Operational Policies  
Part 9. Disclosure of Information  
340:25-5-66 through 340:25-5-67 [AMENDED]  
Part 15. Case Initiation, Case Management, and Case Closure  
340:25-5-110.1 [AMENDED]  
340:25-5-114 [AMENDED]  
340:25-5-118 [AMENDED]  
340:25-5-123 [AMENDED]  
340:25-5-124 [AMENDED]  
340:25-5-124.1 [AMENDED]  
340:25-5-124.2 [NEW]  
340:25-5-133 [NEW]  
Part 17. Past Support  
340:25-5-140.1 [AMENDED]  
Part 21. Establishment  
340:25-5-178 [AMENDED]  
340:25-5-179.1 [AMENDED]  
340:25-5-183 [AMENDED]  
340:25-5-185.1 [AMENDED]  
Part 22. Review and Modification  
340:25-5-198.1 through 340:25-5-198.2 [AMENDED]  
Part 23. Enforcement  
340:25-5-200.2 [NEW]  
340:25-5-201.1 [NEW]  
Part 31. Consumer Reporting Agencies - Credit Bureaus  
340:25-5-265.1 [AMENDED]  
Part 37. Recovery  
340:25-5-305 [AMENDED]  
340:25-5-312 [AMENDED]  
340:25-5-336 [AMENDED]  
Part 39. Accounting and Distribution  
340:25-5-350.1 [AMENDED]  
340:25-5-350.3 through 340:25-5-351 [AMENDED]  
**(Reference APA WF # 02-32 and 02-44)**

### 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; Section 1738B of Title 28 of the United States Code; Sections 302.31, 302.32, 302.38, 307.11, 307.13, and Part 310 of Title 45 of the Code of Federal Regulations; Section 1171.3 of Title 12 of the Oklahoma Statutes; Sections 112, 112A, 413, and 601-604 of Title 43 of the Oklahoma Statutes; and Sections 237 and 238 of Title 56 of the Oklahoma Statutes.

### DATES:

#### Comment period:

January 15, 2003 through February 14, 2003

#### Public hearing:

None requested.

#### Adoption:

February 25, 2003

#### Submitted to Governor:

February 25, 2003

#### Submitted to House:

February 25, 2003

#### Submitted to Senate:

February 25, 2003

#### Gubernatorial approval:

April 10, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in legislative approval on April 22, 2003.

**Final adoption:**  
April 22, 2003

**Effective:**  
July 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- Subchapter 5. Operational Policies
- Part 15. Case Initiation and Case Closure
- 340:25-5-124 [AMENDED]
- 340:25-5-124.2 [NEW]
- (Reference APA WF # 02-32)

**Gubernatorial approval:**

January 21, 2003

**Register publication:**

20 Ok Reg 528

**Docket number:**

03-154A

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Child Support Enforcement Division's (CSED) proposed permanent rule amendments: (1) revise definitions for district office, IV-A, and unreimbursed public assistance; (2) correct the Internet address for CSED; (3) clarify rules on release of address of record and other confidential information both externally and within the Oklahoma Department of Human Services (OKDHS); (4) add description of OKDHS forms; (5) clarify the notice process when noncooperation with CSED is determined; (6) delete reference to good cause; (7) clarify when cases may not be closed under certain circumstances; (8) delete subsection about tribal office case transfers and add cross reference to new rule OAC 340:25-5-124.2; (9) add clarifying language and a provision for transfer of cases due to conflict of interest; (10) clarify that administrative establishment court actions are transferred rather than dismissed; (11) add procedures for tribal office case transfers to incorporate change in status of tribal office; (12) add procedures for redirection of child support payments when physical custody changes; (13) add information to clarify interest rules for interstate cases and when interest is authorized by statute and delete conflicting language; (14) add subsection to explain actual child care expenses; (15) clarify when support for a prior period is established; (16) clarify docketing procedures; (17) add exception to review of support order when a military reservist is recalled to active duty; (18) add provision for circumstances under which spousal support obligation is enforced; (19) add provision for amendment of income assignment and modification of support order when obligor obtains custody of child; (20) add requirement for notice to noncustodial parent regarding request for full credit bureau report and circumstances when notice will be sent; (21) add clarification regarding the types of overpayments; (22) change repayment schedule for overpayments; (23) update terminology; (24) provide for return of overcollections to noncustodial parent rather than payor unless the parent's address is unknown; (25) add rule for issuing payments made out to the custodial person only; (26) change provision for return of undistributed collections to the noncustodial parent rather than the payor; (27) add clarification regarding types of public assistance assigned to arrears as cash assistance from the IV-A and IV-E programs; (28) correct or clarify statutory cites; and (29) simplify language or improve clarity.

**CONTACT PERSON:**

Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

**SUBCHAPTER 1. SCOPE, APPLICABILITY, AND GENERAL PROVISIONS**

**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 custodian in the Central Case Registry of Child Support Enforcement Division (CSED) 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 custodian's physical address.

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

**"Arrears," "arrearage," or "past-due support"** means the total amount of unpaid support obligations that have 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 Section 408 or 471 of the Social Security Act 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) the attorney of record for a custodial person (CP), noncustodial parent (NCP), or biological parent (BP); or
- (B) a person designated by a CP, NCP, or BP according to OAC 340:25-1-3.1.

**"Biological parent" or "BP"** 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 are receiving or who have received child support services and all of the records and actions associated with the group.

**"Central Case Registry"** means Oklahoma's repository for Title IV, Part D, of the Social Security Act (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~~ Section 454A of the Social Security Act. CSED maintains the Central Case Registry under Section 112A of Title 43 of the Oklahoma Statutes.

**"Centralized Support Registry"** means a repository maintained by CSED 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 454B of the Social Security Act. The Centralized Support Registry processes payments ~~in cases:~~

- (A) in all cases in which child support services are being provided under the state child support plan as

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*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) ~~where~~ *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. CSED is the state agency designated to administer the Child Support Enforcement Program for the state of Oklahoma. CSED includes a central state office, district offices, and other offices which may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, Native American tribal organizations, and others. As used in this Subchapter, CSED includes all of these offices and their employees and agents.

"**Custodial person**," "**custodian**," or "**CP**" 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; 56 O.S. § 237.7]

"**DHHS**" means the federal Department of Health and Human Services.

"**DHS**" or "**OKDHS**" means the Oklahoma Department of Human Services.

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

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

"**FPLS**" means the Federal Parent Locator Service.

"**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 obligor to the person entitled to the support or to another person designated by the support order or assignment for payment of support or arrearages or both. [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.

"**IV-A**" means Title IV, Part A, of the Social Security Act covering the federal-state ~~Public Assistance Programs Temporary Assistance for Needy Families (TANF) Program~~.

"**IV-D**" means Title IV, Part D, of the Social Security Act generally relating to child support. Title IV appears in the United States Code as Sections 601 through 687, Subchapter IV, Chapter 7, Title 42.

"**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.

"**IV-E**" means Title IV, Part E, of the Social Security Act covering foster care.

~~"**Local office**" or "**district office**" means a child support enforcement office operated by DHS or through contract or agreement with DHS to serve a specific area of the state.~~

"**Medicaid**" or "**Title XIX**" means medical assistance provided under a state plan approved under Title XIX of the Social Security Act.

"**Medical support**" means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor child(ren).

"**Noncustodial parent**" or "**NCP**" means a parent who does not have primary care, custody, or control of the child.

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

"**OAH**" means the Office of Administrative Hearings: Child Support, ~~Department of Human Services OKDHS~~, which conducts child support enforcement administrative hearings. [56 O.S. § 237.7]

"**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]

"**OCSE**" means the federal Office of Child Support Enforcement.

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

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

"**Participant in a case**" means a child, parent or putative father, or custodial person associated with a child support enforcement case.

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

"**Payment plan**" includes but is not limited to a plan approved by 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. [56 O.S. § 237.7] A payment plan is intended to incrementally reduce arrears.

"**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]

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

"**SPLS**" means the CSED State Parent Locator Service.

"**Support**" means all payments or other obligations due and owing to the obligee or person entitled by the obligor 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 118 of Title 43 of the Oklahoma Statutes. [56 O.S. § 237.7]

"**Support for a prior period**" means the amount of child support ordered for any previous period of time during which the child was not supported by the parent and for which no support order was in effect.

"**Support order**" means a judgment, decree, or order, whether temporary or final, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, income withholding, arrearage, past support, or reimbursement, and may include related costs and fees, interest, attorney's fees, and other relief. [12 O.S. § 1170]

"**TANF**" means Temporary Assistance for Needy Families. TANF has replaced Aid to Families with Dependent Children (AFDC). In this Subchapter, references to TANF include AFDC.

"**Tribunal**" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to 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 public cash assistance from the IV-A and IV-E programs that has not yet been recovered.

**340:25-1-2.1. Location for information**

The mailing address of the state office of Child Support Enforcement Division (CSED) is: Child Support Enforcement Division, Capitol Station Box 53552, Oklahoma City, OK 73152-3552. ~~The toll free telephone number is 1-800-522-2922. Addresses and telephone numbers of local district child support offices throughout Oklahoma may be obtained by calling or writing the central state office of CSED customer service at 1-800-522-2922. This information is also available on the Internet at <http://www.okdhs.org/childsupport/>.~~

**SUBCHAPTER 5. OPERATIONAL POLICIES**

**PART 9. DISCLOSURE OF INFORMATION**

**340:25-5-66. Legal basis for release of information**

Federal and state laws and the rules adopted by the Oklahoma Commission for Human Services restrict the use and disclosure of information. Release of information from Child

Support Enforcement Program records is based on applicable provisions of:

- (1) Sections OAC 340:2-21-12 through 340:2-21-16, 340:2-21-32, 340:2-21-35, and 340:75-1-44;
- (2) Chapter 70 of Title 10, Section 413 of Title 43, Sections 24A.1 through 24A.26 of Title 51, and Sections 183 and 231 through 240.23 of Title 56 of the Oklahoma Statutes;
- (3) Sections 303.15, 303.70, and 307.13 of Title 45 of the Code of Federal Regulations; and
- (4) Sections 453, 454, 454A, ~~455~~, and 463 of the Social Security Act.

**340:25-5-67. Information ~~restrictions~~ disclosure**

*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 (OKDHS) or any other public or private entity shall be confidential.* [56 O.S. § 183] All files and records concerning the assistance or services provided under the Child Support Enforcement Program or concerning a putative father of a child born out of wedlock are confidential except as otherwise authorized by law. [56 O.S. § 237] Any information the Child Support Enforcement Division (CSED) obtains from federal or state agencies is subject to limitations on disclosure imposed by laws governing the information received from those agencies. CSED 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 ~~except that information.~~ 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. Otherwise, information 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 automated information networks within OKDHS, with other agencies of the state and other states, and with federal and tribal agencies and other countries;
  - (B) exchange of information through automated information networks among with representatives of OKDHS and other state agencies administering programs under Title IV-A, and Title XIX, and other programs designated by the Secretary of DHHS as necessary to perform state agency IV-D responsibilities; and with other agencies of the state and other states, and automated information networks as necessary to carry out the purposes of IV-D; and to the extent necessary to carry out state agency Title IV-A and Title XIX responsibilities;
  - (BC) release of Social Security numbers for various child support enforcement purposes, such as locating the parents, submitting cases for federal administrative and tax offset, state tax offset, ~~and~~ financial

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institution data match, enrolling children as beneficiaries of health insurance coverage, and processing interstate child support enforcement;

~~(2) persons authorized by statute or DHS rules; [56 O.S. § 156]~~

~~(3) parties to a child support case, their attorneys, interpreters, and their 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 which has been taken on the case 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; and~~

~~(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 health insurance coverage;~~

~~(4) parents or custodians 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 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE**

#### **340:25-5-110.1. Applications**

(a) To apply for child support enforcement services, a person must submit a completed, and signed application form Form CSED-1, Application for Child Support Services, or Form CSED-1-C, Request for Child Support Services, and a \$25.00 application fee, if required under OAC 340:25-5-117, to the address shown on the application form. The application fee must be paid by check or money order payable to the Oklahoma Department of Human Services (OKDHS).

(b) Application forms are obtained at any child support or other OKDHS office or by writing or telephoning the Child Support Enforcement Division. The mailing address to obtain an application form is: P.O. Box 53552, Oklahoma City, Oklahoma 73152-3552. The customer service toll free telephone number is 1-800-522-2922. A printable application is Printable application forms are available on the Internet at <http://www.okdhs.org/childsupport/>.

(c) An applicant who is a custodial person must give OKDHS authority to endorse and negotiate payments related to child support and to spousal support on behalf of the custodial person and child(ren).

#### **340:25-5-114. Procedures for determining and processing noncooperation on TANF and non-TANF Medicaid cases**

(a) Section OAC 340:10-10-5 describes the requirement for custodial parents receiving TANF or non-TANF Medicaid to cooperate with the Child Support Enforcement Division (CSED) in child support enforcement services. If the custodial parent fails to cooperate as described in OAC 340:10-10-5, CSED reviews the case to determine non-cooperation. If CSED determines noncooperation, CSED notifies the custodial parent in writing of the reasons for the determination of noncooperation and the reduction in TANF payment Oklahoma Department of Human Services (OKDHS) Family Support Services (FSS) staff in the county office. The notice must include an explanation that the penalty for noncooperation is a 25% payment standard reduction under OAC 340:10-10-7. OKDHS FSS staff in the county office update the computer document for noncooperation with CSED and a computer-generated notice under OAC 340:65-5-1 is sent to advise the recipient of any decrease in benefits due to noncooperation.

(b) OKDHS FSS staff in the county office determine whether good cause for noncooperation with CSED exists based on OAC 340:10-10-6.

#### **340:25-5-118. Noncooperation on non-TANF cases**

(a) The Child Support Enforcement Division (CSED) determines noncooperation ~~and good cause~~ in a non-TANF case on the same basis as in a TANF case. ~~Subsections (e) and (d) of OAC 340:10-10-5 describe~~ describes indications of noncooperation. ~~Paragraphs (a)(1) and (a)(2) of OAC 340:10-10-6 describe good cause.~~ If CSED determines noncooperation, CSED closes the case under Section 303.11 of Title 45 of the Code of Federal Regulations.

(b) If the applicant wishes to reopen a case closed because of noncooperation or good cause, CSED requires a new application and a \$25.00 application fee are required to reopen a case closed because of noncooperation. Also, the custodial person The applicant for services must agree to cooperate with CSED.

#### **340:25-5-123. Case closure system**

(a) The Except as provided in (b) and (c) of this Section, the Child Support Enforcement Division (CSED) closes cases eligible for closure under Section 303.11 of Title 45 of the Code of Federal Regulations.

(b) A child support case may not be closed when:

(1) court ordered support is owed to the state; and

(2) current child support is being collected by income assignment.

(c) A child support case may be closed when less than \$500.00 in court ordered support is owed to the state unless there has been:

(1) a collection during the past six months; or

(2) a federal or state tax refund intercept in the past 18 months.

**340:25-5-124. Assignment of cases to child support offices**

(a) Oklahoma child support cases are assigned to a district office serving the county where the Oklahoma order for current child support was entered or docketed in district court. Other child support orders are assigned to a district office serving the county in which the order is registered under ~~Section 601-601~~ Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes. If there are multiple Oklahoma support orders, cases are assigned to a district office serving the county where the presumed controlling order for future support was entered or docketed in district court.

(b) If there is no Oklahoma order for current support, cases are assigned to a district office serving the county where the custodian of the ~~child~~ child(ren) resides unless the child is in state custody or an order is registered in Oklahoma. If the child is in state custody, the case is assigned to a district office serving the county in which the child custody order was entered. Except in cases in which an order is registered in Oklahoma, if the custodian of the ~~child~~ child(ren) does not reside in Oklahoma, cases are assigned to the office serving the county where the noncustodial parent or putative father resides.

~~(c) CSED refers eligible cases with significant tribal contacts and as agreed by the appropriate tribe to a tribal child support enforcement office. A tribal child support office may refuse to accept a referral because of lack of jurisdiction to establish or enforce a child support order, or because the case is not eligible for referral.~~

~~(1) The eligibility criteria for the referral to a tribal office for paternity establishment and establishment of a support order are:~~

- ~~(A) the child(ren) is Native American;~~
- ~~(B) the noncustodial parent is:
 
  - ~~(i) Native American; or~~
  - ~~(ii) a non Native American who signs a request for transfer to a tribal office and tribal court jurisdiction on a form prescribed by DHS;~~~~
- ~~(C) the case must not have any pending action before a district or administrative court; and~~
- ~~(D) the custodial person signs a request for transfer to a tribal office and tribal court jurisdiction on a form prescribed by DHS.~~

~~(2) The eligibility criteria for referral to a tribal office for enforcement of support orders are:~~

- ~~(A) a case must have an order signed by a judicial authority;~~
- ~~(B) a case must not have any pending action before a district or administrative court;~~
- ~~(C) if the child support order is not a tribal order, the noncustodial parent must:
 
  - ~~(i) be Native American; or~~
  - ~~(ii) work for a tribe; and~~~~
- ~~(D) unless the child support order is a tribal order, the custodial person must sign an affidavit to waive district or administrative court jurisdiction on a form prescribed by DHS.~~

~~(3) For purposes of this Section, "Native American" means a person who is a member or eligible for membership in an Indian tribe, subject to verification by a tribal child support enforcement office.~~

~~(c) The Child Support Enforcement Division (CSED) does not transfer cases docketed or registered under Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes in district court because the custodial person or noncustodial parent moves to a county outside of the original district office's service area.~~

~~(d) OAC 340:25-5-124.2 contains information regarding cases eligible for transfer to the Chickasaw Nation Tribal Child Support Office.~~

~~(e) CSED may reassign a case to another district office to avoid a conflict of interest. See OAC 340:2-1-29.~~

**340:25-5-124.1. Transfer of administrative establishment case to another district child support office**

~~(a) Child A child support offices determine office determines~~ the district office to which an administrative establishment case should be assigned according to OAC 340:25-5-124.

~~(b) A district office transfers an administrative establishment case to another office according to (c) of this Section if either:~~

- ~~(1) the case is assigned to the wrong child support office; or~~
- ~~(2) the custodial person moves to a county outside the original office's service area.~~

~~(c) The original office immediately transfers, rather than dismisses, an administrative establishment case court action to the new district office if the original office has not obtained service of process on the noncustodial parent. If service has been obtained, the original office completes any administrative case litigation before transferring the case to the new district office.~~

**340:25-5-124.2. Transfer of eligible cases to the tribal office**

~~(a) Child Support Enforcement Division (CSED) transfers eligible cases to the Chickasaw Nation Tribal Child Support Office (tribal office) under the Court of Indian Offenses civil jurisdiction requirements in Section 11.103 of Title 25 of the Code of Federal Regulations, and the Full Faith and Credit for Child Support Orders Act (FFCCSOA) in Section 1738B of Title 28 of the United States Code.~~

~~(1) The eligibility criteria for transferring a case to the tribal office for paternity establishment and establishment of a support order are:~~

- ~~(A) the noncustodial parent or putative father is:
 
  - ~~(i) Native American; or~~
  - ~~(ii) non-Native American and the custodian is Native American and both agree to transfer the case to the tribal office and to submit to tribal court jurisdiction; and~~~~
- ~~(B) the case must not have any pending action before district or administrative court.~~

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(2) Cases with child support orders are eligible for transfer to the tribal office for enforcement if there is no pending action before district or administrative court and if any one of the statements in (A) through (D) of this paragraph is true.

(A) The order is a tribal order.

(B) The order is not a tribal order, but the noncustodial parent is Native American and the custodian is notified of the case transfer.

(C) The order is not a tribal order, but the noncustodial parent is non-Native American and a tribal employee.

(D) The order is not a tribal order, but the noncustodial parent is non-Native American, the custodian is Native American, and both agree to transfer the case to the tribal office and submit to tribal court jurisdiction.

(3) The tribal office notifies the custodian of the case transfer.

(b) For purposes of this Section, "Native American" means a person who is a member of an Indian tribe, or is eligible for membership.

### **340:25-5-133. Current child support follows the child when physical custody changes**

(a) When the legal custodian relinquishes physical custody of a child(ren) to another custodian, the Child Support Enforcement Division (CSED) of the Oklahoma Department of Human Services (OKDHS) redirects current child support payments to the new custodian under Sections 7202.3 of Title 10 and 237 of Title 56 of the Oklahoma Statutes. A custodial person who relinquishes physical custody of a child(ren) to another custodian must notify CSED of the change. CSED remits current child support payments to the new custodian. Transfer of child support payments occurs with the first payment received in the month after a change in physical custody takes place.

(b) When the legal custodian of a child(ren) dies and another custodian, who is not the obligor, assumes custody of the child(ren), CSED establishes a new support order with the new custodian as the obligee. The new custodian must submit an application for child support services if an application is required under OAC 340:25-5-117. CSED redirects current child support payments to the new custodian pending receipt of an application if required and establishment of the new support order.

(c) CSED directs past-due support payments to the custodian(s) to whom the past-due support is owed.

## PART 17. PAST SUPPORT

### **340:25-5-140.1. Interest**

(a) **General.** After the Centralized Support Registry is implemented pursuant to Section 413 of Title 43 of the Oklahoma Statutes, interest is collected and enforced on delinquent Oklahoma court-ordered child support payments pursuant to Section 114 of Title 43 of the Oklahoma Statutes. Interest on judgments for ~~spousal support and~~ support for a prior period

established under ~~Section~~ OAC 340:25-5-179.1 is collected by Child Support Enforcement Division (CSED) from the date of the order establishing the support obligation.

(b) ~~**Accrual.** Accrual of interest for an unpaid amount due begins on the first day the unpaid amount is delinquent.~~

(~~e~~) **Delinquency.** For purposes of interest accrual purposes, any unpaid portion of an amount due is considered delinquent the day after the due date specified in the court order. If the court order does not specify a specific due date of the month, the payment must be made by the last day of the month, and it is delinquent on the first day of the following month if it is not paid.

(~~d~~) **Grace period and accrual.** CSED may allow a grace period during which interest is not charged ~~on a delinquent amount if the delinquent amount is paid during the grace period. If the delinquent amount is not paid during the grace period, interest~~ Interest accrues from the date the arrears are in excess of one month's current support.

(~~e~~) **Interest rate.**

(1) For orders established in other states, the law of the state entering the order determines the amount and rate of interest due.

(2) For orders established in Oklahoma, Oklahoma law determines the amount and rate of interest due.

(e) **Order silent as to interest.** When an order that settles a child support arrearage is silent as to interest, the party with the right to collect has not waived the interest.

(f) **Enforcement.** Accrued interest is considered child support. Interest is included in all enforcement remedies unless specifically prohibited by that remedy.

(g) **Interstate cases.** CSED collects interest on incoming interstate cases when an initiating state calculates the interest owed and requests that CSED collect it.

(h) CSED applies payments to interest after current support and all arrears have been paid in full.

(i) **Reopening closed cases.** CSED does not reopen closed child support cases at the request of a customer for the purpose of collecting interest.

## PART 21. ESTABLISHMENT

### **340:25-5-178. Establishment of current child support**

(a) The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) establishes current child support under:

(1) Sections 454, 456, and 466 of the Social Security Act;

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Chapters 1 and 3 of Title 10; Title 43; and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) CSED uses the child support guidelines in Sections 118 and 119 of Title 43 of the Oklahoma Statutes to:

(1) establish the amount of current support; and

(2) prepare a child support computation form under Section 120 of Title 43 of the Oklahoma Statutes.

(c) To establish the amount of current support, CSED considers "actual" child care expenses to be the total amount paid to the child care provider including any amount paid by OKDHS.

(d) CSED establishes child support orders for minor child(ren) only.

(~~e~~) CSED enforces child support orders for disabled adults under Section 112.1A of Title 43 of the Oklahoma Statutes but establishes child support orders under Section 112.1A only during the minority of the child.

**340:25-5-179.1. Establishment of support for a prior period**

(a) The Child Support Enforcement Division (CSED) establishes support for a prior period ~~in paternity cases under Sections 70 and 83 of Title 10, Sections 118 and 119 of Title 43, and Section 238.6B of Title 56 of the Oklahoma Statutes.~~

(b) When paternity is being established by court order or when paternity has been previously established by a signed Form CSED-209, Affidavit Acknowledging Paternity, CSED establishes current support and support for a prior period at the same time under Sections 70 and 83 of Title 10, Sections 118 and 119 of Title 43, and Section 238.6B of Title 56 of the Oklahoma Statutes.

(c) ~~When paternity is not at issue~~ a child(ren) is born during a marriage and no order addressing support for a prior period exists, CSED establishes support for a prior period under Sections 118 and 119 of Title 43 and Section 238.1 of Title 56 of the Oklahoma Statutes.

(1) CSED establishes support for a prior period under this subsection only when:

(A) current child support is sought; and

(B) TANF has been expended in any month during the past five years.

(2) CSED may issue a Notice of Support Debt or file a district court action to establish support for a prior period. CSED limits this prior period to the number of months on TANF during the five years immediately before the date CSED issues the Notice of Support Debt, or files the district court action.

**340:25-5-183. Establishment of medical support**

The Child Support Enforcement Division (~~CSED~~) establishes medical support under Section 466 of the Social Security Act; Sections ~~302.33 and 303.31 and 303.32~~ of Title 45 of the Code of Federal Regulations; and Sections 6058A of Title 36, 118.2 of Title 43, and 237 of Title 56 of the Oklahoma Statutes.

**340:25-5-185.1. Docketing**

The Child Support Enforcement Division (CSED) promptly docket child support orders entered by the DHS Office of Administrative Hearings: Child Support, as required Oklahoma Department of Human Services, with the appropriate district court under Sections 238.1, 238.6B, and 240.2 of Title 56 of the Oklahoma Statutes.

**PART 22. REVIEW AND MODIFICATION**

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

(a) **Purpose.** The purpose of the review process is to determine ~~if~~ whether a child support order should be modified to ensure substantial compliance with the child support guidelines in Title 43 of the Oklahoma Statutes.

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

(c) **Scheduling reviews.** When CSED receives a request to review an order, CSED determines the state with the legal authority under the Uniform Interstate Family Support Act (UIFSA) to modify the order. If another state has the legal authority to modify the order, CSED follows the provisions of (h) of this Section. If Oklahoma has the legal authority to modify the order, CSED follows the provisions of this subsection. CSED 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) CSED reviews ~~orders~~ a support order on the written request of any party when all of the criteria described in (A) and (B) of this paragraph are met.

(A) It has been more than 12 months since the support order was established, reviewed, or modified. CSED uses the date the order was entered to compute time periods. If an order is not entered after the review or modification process, CSED uses the completion date of the review to compute time periods. The 12 month time period in this subparagraph does not apply when a military reservist custodial person or noncustodial person is recalled to active duty.

(B) The non-requesting party is located.

(2) Within 15 days after receiving a request for a review, CSED determines if the criteria described in (1)(A) and (1)(B) 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) In currently active TANF and IV-E foster care cases, CSED may initiate reviews on its own initiative for any reason 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 ~~needed~~ required for the review.

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

(d) **Review.** Within 30 days after the deadline for the parties to submit requested financial and other information to CSED under (c)(4) of this Section, CSED completes the review process and notifies parties of its determination as to whether or not the support order should be modified. In conducting the review, if CSED finds the existing support order deviates in excess of 10% from the child support guidelines, CSED makes

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a determination that the support order should be modified. The notice of determination includes instructions for contesting the determination.

(e) **Contest of review determination.** Any person aggrieved by the review determination may contest the determination by submitting new or additional information within 15 days after the date on the notice of determination. CSED considers any new or additional information that is timely submitted, and within 15 days, makes a final determination whether or not the support order should be modified.

(f) **Modification after review.** CSED proceeds with the modification of the order if:

- (1) there is no contest within 15 days after a CSED determination that the order should be modified; or
- (2) the final determination after contest of review is to modify the support order.

(g) **Termination of the review process.**

- (1) The person requesting a review may withdraw the request after the review process begins upon approval by CSED.
- (2) If the requesting person fails to supply information requested by CSED as instructed, CSED terminates the review process, unless CSED or the non-requesting party requests the process continue.

(h) **Interstate cases.** When another state has legal authority under UIFSA to modify an order, CSED obtains the information necessary for the review and transmits the documents to the other state within 20 days after receipt.

### **340:25-5-198.2. Modification**

~~(a) When Child Support Enforcement Division (CSED) obtains information that indicates dependent health insurance is available to the noncustodial parent through employment or other group plan, but not included in an existing support order, CSED petitions the appropriate tribunal to modify the order under Sections 303.8 and 303.31 of Title 45 of the Code of Federal Regulations.~~

~~(b) The Child Support Enforcement Division (CSED) may initiate modification of an a support order under Section 112 of Title 43 of the Oklahoma Statutes in the appropriate tribunal whenever when facts indicate modification is warranted under applicable state law or federal law or regulation.~~

~~(b) When CSED obtains information that indicates dependent health insurance is available to the noncustodial parent through employment or other group plan, but not included in an existing support order, CSED petitions the appropriate tribunal to modify the order under Sections 303.8 and 303.31 of Title 45 of the Code of Federal Regulations.~~

~~(c) OAC 340:25-5-201.1 describes when modification of a support order is appropriate after an obligor obtains physical or legal custody of the child(ren).~~

## PART 23. ENFORCEMENT

### **340:25-5-200.2. Enforcement of spousal support**

The Child Support Enforcement Division (CSED) enforces a spousal support obligation for a spouse or former

spouse under Section 454 of the Social Security Act and Section 302.31 of Title 45 of the Code of Federal Regulations when CSED is enforcing that spouse's or former spouse's current child support obligation.

### **340:25-5-201.1. Amendment of income assignment and modification after obligor obtains custody**

(a) The Child Support Enforcement Division (CSED) amends the "Order/Notice To Withhold Income For Child Support" to stop current support when an obligor obtains physical custody of all children who are the subject of the support order, or when the parties to the case reunite. CSED does not amend the "Order/Notice To Withhold Income For Child Support" if there is any indication of parental kidnapping or involuntary relinquishment.

(b) If the obligor obtains physical or legal custody of all children who are the subject of the support order and makes application for services, CSED initiates modification of the order to establish current support.

## PART 31. CONSUMER REPORTING AGENCIES - CREDIT BUREAUS

### **340:25-5-265.1. Access of consumer reporting agency - credit bureau - information**

(a) Access to information. The Oklahoma Department of Human Services through its Child Support Enforcement Division (CSED) periodically accesses credit information available through consumer reporting agencies - credit bureaus. Access of this information is governed by ~~Section~~ Sections 604 and 608 of the Fair Credit Reporting Act [15 U.S.C. § 1681b and 15 U.S.C. § 1681f].

(b) Notice.

(1) Each time CSED requests a full credit bureau report on a noncustodial parent for use in establishment or modification of a support order, CSED sends the noncustodial parent advance notice to confirm that the report requested belongs to the correct individual. The noncustodial parent is not required to authorize release of the report.

(2) CSED does not send a noncustodial parent advance notice when CSED requests a credit bureau report for locate or enforcement purposes.

## PART 37. RECOVERY

### **340:25-5-305. Purpose and basis**

(a) The purposes of the rules in this Part are to:

- (1) establish policies and procedures used by the Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) to recover overpayments made by CSED to custodial persons, non-custodial parents, and other entities; and
- (2) resolve payment disputes arising from overpayments.

(b) Types There are three categories of overpayments include, but are not limited to:

(A1) Retained support occurs when the custodial person has retained kept support payment(s) in violation of the assignment of support rights;

(B2) Erroneous payment occurs when CSED has paid money to an incorrect custodial person or noncustodial parent or failed to retain money assigned to the state because of an administrative error;

(C3) Bad debt occurs when:

(A) the funding for a payment made by CSED to a custodial person or noncustodial parent is subsequently withdrawn when a tax intercept or other collection is revoked; or

(B) a check or other payment instrument received by CSED from a noncustodial parent or other payor on behalf of the noncustodial parent is dishonored after a payment has been made to the custodial person; and

(2) to resolve payment disputes arising between the custodial person and the noncustodial parent(s) for the purpose of establishing the amount of any arrearage.

(bc) In recovering overpayments under this Part, CSED is governed by Title IV, Part D, of the Social Security Act; and Section 7202.3 of Title 10 of the Oklahoma Statutes; and Sections 171, 185, and Section 231 et seq. through 244 of Title 56 of the Oklahoma Statutes. CSED may use any legal remedy to recover overpayments, including but not limited to, state tax offsets under Part 27 of this Subchapter.

**340:25-5-312. General overpayment policies and procedures**

(a) **General.** A custodial person, noncustodial parent, or entity to whom Child Support Enforcement Division (CSED) has made an overpayment, owes the amount of the overpayment to CSED, acting on behalf of the State of Oklahoma.

(b) **Fraud.** If an overpayment may have resulted in whole or in part from false or misleading statements, concealed information, willful misrepresentation, or if fraud is otherwise suspected, CSED may refer the information to the Oklahoma Department of Human Services (OKDHS) Office of Inspector General (OIG) for appropriate action. Action may include, but is not limited to, investigation and criminal prosecution.

(c) **Bad debt.** CSED recovers the full amount of any dishonored check from the next payment from the noncustodial parent or the payor until the amount of the dishonored check is paid in full. To satisfy a bad debt resulting from a:

(1) tax intercept paid to a custodial person which is subsequently withdrawn, CSED takes the full amount of any monthly payment to the recipient until the bad debt is paid in full; or

(2) noncustodial parent's dishonored check, CSED takes the full amount of the noncustodial parent's subsequent payment(s) until the bad debt is paid in full.

(d) **Erroneous payments and retained support.** CSED recovers overpayments from custodial persons without prior notice by withholding the overpayment from the next monthly

payment to the custodial person if the overpayment is discovered before CSED makes the next monthly payment. If the amount of the overpayment exceeds the amount of the monthly payment to the custodial person, the excess is recovered by repayment agreement as described in (e) of this Section. CSED recovers 50 percent of monthly current support payments to the recipient and recovers the total amount of any arrears payments made at any time, in order to satisfy erroneous payments and retained support overpayments until the overpayment is recovered in full. CSED does not reduce the recovery amount at the recipient's request.

(e) CSED attempts to recover overpayments through the procedure described in this subsection when the procedures described in (c) and (d) of this Section are inappropriate.

(4e) **Notice.** CSED sends a notice of overpayment and recovery to the debtor recipient of the overpayment. The notice includes:

(A1) a statement that the debtor recipient received money to which the recipient was not entitled and owes money to CSED, the amount of the overpayment, and instructions for returning the money within 30 days after the date on the notice;

(B) a description of CSED's reasons for believing there has been an overpayment; a list of any payments CSED believes the custodial person has retained if overpayment is believed to be due to retained support; and a description of documentary evidence that CSED possesses;

(C) instructions for completing a repayment agreement and for sending the repayment agreement and payments pursuant to the agreement to: CSED Overpayment Unit, P.O. Box 36607, Oklahoma City, OK 73136 2607;

(2) the amount of the overpayment;

(3) the method of withholding from monthly payments until the overpayment is recovered in full;

(D4) notice a statement that CSED may collect the overpayment through any means permitted by law, including but not limited to, state tax offset, regardless of whether a repayment agreement is signed. This notice instructs the debtor to notify CSED if the debtor has other DHS overpayments and wants CSED to consider an alternative repayment arrangement. It also includes directions for notifying CSED if a non TANF case becomes an active TANF case. In active TANF cases, CSED limits withholding to 10% of the TANF payment standard provided in OAC 340:10-3-59 and DHS Appendix C-1, Schedule of Maximum Income, Resource, and Payment Standards. In other cases, recovery may include, but not be limited to, withholding up to 50% of any support collected on the debtor's behalf; and

(E) a description of any sanctions for failure to resolve the overpayment; and

(F5) instructions for filing an objection requesting an administrative review under OAC 340:25-5-200.1 within 30 days after the date on the notice of overpayment and recovery and for requesting an administrative review under OAC 340:25-5-200.1 to show why a debt is not

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owed letter, if the recipient disagrees with the amount of the overpayment.

(2) ~~Custodial persons must comply with repayment agreements or face the sanctions described in this subsection. Alternatively, CSED may approve a settlement agreement. CSED may impose or seek other penalties or sanctions in addition to these.~~

(Af) **TANF customers.** ~~If a TANF recipient retains child support receipts CSED may make a noncooperation determination if a TANF recipient does not comply with the repayment agreement or fails to make the payments as agreed. On making the noncooperation determination, CSED takes action to reduce the TANF payment referral to the TANF social services specialist.~~

(B) ~~If the former TANF recipient or non-TANF recipient of IV-D services does not sign the agreement or signs the agreement but fails to make payments as agreed, CSED may withhold up to 50% of any support collected on the case to recover the overpayment. Regardless of whether a former TANF recipient cooperates by signing the repayment agreement, all collections made in excess of the amount of current support are applied to any debt assigned to the State before money is forwarded to the former TANF recipient.~~

(3g) **Administrative review.** If an administrative review is requested under OAC 340:25-5-200.1, the purpose of the review is to:

(A) ~~provide the debtor recipient with an opportunity to challenge CSED's claim offer new or additional information regarding the amount of the overpayment;~~

(B) ~~resolve disputes related to the claim; and~~

(C) ~~enter into an agreement to repay the overpayment.~~

## 340:25-5-336. Inactive status and closure of overpayment recovery cases

(a) ~~The Child Support Enforcement Division (CSED) may place an overpayment recovery case in inactive status if the whereabouts of the debtor recipient of the overpayment (recipient) is unknown. If When the debtor recipient is located, CSED returns the case to active status.~~

(b) CSED may close an overpayment recovery case when:

(1) ~~the debt overpayment has been satisfied by payment in full;~~

(2) ~~the person owing the debt recipient dies and leaves no resources from which the State's claim overpayment may be paid; or~~

(3) ~~there is a legal determination CSED determines that the debt overpayment is uncollectible.~~

## PART 39. ACCOUNTING AND DISTRIBUTION

### 340:25-5-350.1. Return of overcollected support amounts

If the Child Support Enforcement Division (CSED) receives:

(1) ~~a support payment for an obligation due in excess of the obligation in excess of the noncustodial parent's obligations, CSED returns the excess amount to the payor noncustodial parent within 45 days after discovering the overcollection. If the noncustodial parent's address is unknown, the support payment is returned to the employer or other payor;~~

(2) ~~a support payment and the whereabouts of the custodial person custodial person's address is unknown, CSED applies support collections to any unreimbursed public assistance debt associated with the noncustodial parent;~~

(3) ~~an erroneous excess payment, CSED returns it to the noncustodial parent if possible. If the noncustodial parent's address is unknown, the support payment is returned to the employer or other payor; or~~

(4) ~~a payment that cannot be disbursed to a custodial person, or returned to the payor or noncustodial parent, and there is no debt to the State of Oklahoma, CSED remits the payment to the Oklahoma Department of Human Services (OKDHS) General Revenue Fund Treasury.~~

### 340:25-5-350.3. Payment of support through Centralized Support Registry

(a) The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) operates a Centralized Support Registry (Registry) for the receipt, recording, allocation, distribution, and disbursement of support payments. This Section applies to both IV-D and non-IV-D cases unless the context indicates otherwise.

(b) The Registry is also known as the State Disbursement Unit. CSED operates the Registry under:

(1) Sections 410 through 413 of Title 43 of the Oklahoma Statutes;

(2) Sections 302.51 and 303.100 of Title 45 of the Code of Federal Regulations; and

(3) Sections 454B and 457 of the Social Security Act.

(c) Support payments must be paid as instructed in writing by CSED. CSED may require payors and individuals to provide information needed to identify and properly allocate and distribute payments and to submit payments to the Registry in accordance with Section 413 of Title 43 of the Oklahoma Statutes. CSED safeguards case information and records received from payors and individuals. Information and records concerning IV-D and non-IV-D recipients of services through the Registry are confidential under Section 183 of Title 56 of the Oklahoma Statutes except as provided in OAC 340:25-5-67.

(d) CSED reserves the right to refuse to accept a personal checks check after receiving a non-sufficient funds check from the same payor.

(e) CSED considers the date of collections collection the date that payments are received by the Registry.

(f) CSED allocates and distributes support payments under OAC 340:25-5-351.

(g) CSED issues payments, made out to the custodian only, under subsection (11)(B) of Section 454 of the Social Security

Act and Section 302.38 of Title 45 of the Code of Federal Regulations.

(h) CSED returns undistributed collections to a ~~payor~~ the noncustodial parent within 30 days if CSED is unable to distribute the collection. If the noncustodial parent's address is unknown, the support payment is returned to the employer or other payor.

(~~h~~i) CSED is not responsible for overpayment, underpayment, nonpayment, misdirection of payment, or other distribution error caused by either incorrect payments or information submitted to CSED or CSED receiving no information or payment. CSED does not attempt to recover, redirect, forward, repay, or otherwise correct this type of error.

(ij) When CSED errs, CSED recovers overpayments to parties or custodians in both IV-D and non-IV-D cases as described in Part 37 of this Subchapter.

**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 Title IV, Part D of the Social Security Act, 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 457 of the Social Security Act after collections are allocated according to this Section.

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

(1) OKDHS 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. OKDHS honors designated payments from noncustodial parents who have multiple family obligations if payments are reasonably consistent with this Section. Otherwise, OKDHS allocates non-collection action payments to cases with court-ordered obligations before cases without court-ordered obligations.

(2) If a noncustodial parent in a non-IV-D case has only one family support obligation, OKDHS pays collections directly to the family without allocating collections to the various types of support obligations. However, in all cases Child Support Enforcement Division (CSED) retains collections from enforcement actions that CSED has taken to recover money assigned to a state. Non-IV-D cases are child support cases not ~~being~~ otherwise served under Title IV, Part D of the Social Security Act.

(3) In allocating collections, OKDHS gives priority to cases in which unreimbursed assistance is owed to the state of Oklahoma.

(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 ~~public~~ cash assistance from the IV-A and IV-E programs, the support is permanently assigned. In cases involving unreimbursed assistance, OKDHS retains current monthly support collections in excess of the current assistance payment under TANF to reimburse the state for past assistance.

(5) OKDHS applies payments to interest under OAC 340:25-5-140.1.

(c) **Initial allocation to monthly current support obligations.** Except as provided in (e) of this Section, OKDHS initially allocates collections to current support obligations due each month.

(1) If collections are less than the amount of all current support due, OKDHS allocates collections on a pro rata basis to current child support due, fixed medical obligations, and fixed child care obligations.

(2) After obligations in (1) of this subsection are met, OKDHS 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, OKDHS allocates collections under payment plans to ~~monthly~~, 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, OKDHS first allocates collections on a pro rata basis to past-due monthly child support, fixed monthly past-due medical obligations, and fixed monthly child care obligations.

(2) After obligations in (1) are met, OKDHS allocates collections to monthly past-due spousal support.

(3) OKDHS 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) OKDHS allocates federal income tax refund offset collections to the total amount in arrears. Except for collections under a payment plan, OKDHS allocates collections above current support obligation to total arrears.

(2) When collections are insufficient to meet the total amount in arrears, OKDHS first allocates collections on a pro rata basis to child support, medical, and child care arrearages. After all child support, medical, and child care arrearages are satisfied, OKDHS allocates remaining collections to spousal support arrearages.

(f) **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.** OKDHS prorates and applies support collections to each family based on the fixed current monthly support obligation due each family.

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(A) If collections for current support are less than the amount of current child support due for all families, OKDHS prorates and allocates collections to each family based on each family's total current child support due, including fixed medical and child care obligations.

(B) The collections applied to each family are then allocated to the family's current child support due according to ~~subsection~~ (c) of this Section.

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

**(2) Past-due support under a payment plan.**

(A) OKDHS allocates collections to payment plans for multiple families in the order described in (i) - through (iii) of this subparagraph. If there are multiple families within a category described in (i) - through (iii) of this subparagraph, OKDHS allocates collections among the families according to (B) of this paragraph. The collections allocated to a family's payment plan are then allocated to monthly past-due support obligations according to ~~subsection~~ (d) of this Section. Allocations are:

(i) first, to in-state cases. In-state cases are:

(I) cases under Title IV, Part D of the Social Security Act, that involve either assignment to the ~~state~~ State of Oklahoma or current receipt of child support services under an application for services in Oklahoma; or

(II) non-IV-D cases ~~being~~ paid through the Centralized Support Registry;

(ii) second, to incoming interstate cases; ~~and~~

(iii) third to incoming high-volume administrative enforcement cases in interstate actions.

(B) If there are multiple families within a category described in ~~paragraph~~ (2)(A)(i) - through (iii) of this subsection, OKDHS prorates and allocates payment plan collections among families in that category based on each family's fixed monthly payment plan obligations due. If the payment plan obligation for a family is satisfied, the remaining collections are prorated and allocated among the other families within the category still having unsatisfied past-due payment plans based on each family's fixed monthly payment plan obligations due. If the past-due payment plans for all families in a category are satisfied, remaining collections are allocated to families in the next category.

**(3) Total arrears.**

(A) OKDHS allocates collections to arrears for multiple families in the order described in (i) - through (iii) of this subparagraph. If there are multiple families within a category described in (i) - through (iii) of this paragraph, OKDHS allocates collections among the families according to (B) of this paragraph. Allocations are:

(i) first, to in-state cases. In-state cases are:

(I) cases under Title IV, Part D of the Social Security Act, that involve either assignment to the ~~state~~ State of Oklahoma or current receipt of child support services under an application for services in Oklahoma; or

(II) non-IV-D cases ~~being~~ paid through the Centralized Support Registry;

(ii) second, to incoming interstate cases; ~~and~~

(iii) third, to incoming high-volume administrative enforcement cases in interstate actions.

(B) If there are multiple families within a category described in ~~paragraph~~ (3)(A)(i) - through (iii) of this subsection, OKDHS prorates and allocates total arrears collections among families in that category based on each family's total arrears due. If the total arrears obligation for a family is satisfied, the remaining collections are prorated and allocated among the other families within the category still having unsatisfied total arrears based on each family's total arrears due. If the total arrears for all families in a category are satisfied, remaining collections are allocated to families in the next category.

[OAR Docket #03-728; filed 4-22-03]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE

[OAR Docket #03-740]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

Part 10. Oklahoma Children's Services (OCS)

340:75-1-150 through 340:75-1-151 [AMENDED]

340:75-1-151.1 through 340:75-1-151.2 [NEW]

340:75-1-152 [AMENDED]

340:75-1-152.1 through 340:75-1-152.2 [REVOKED]

340:75-1-152.3 through 340:75-1-152.9 [NEW]

340:75-1-153 [REVOKED]

340:75-1-154 [AMENDED]

340:75-1-155 [NEW]

Part 11. Comprehensive Home-Based Services (CHBS)

340:75-1-175 through 340:75-1-176 [AMENDED]

340:75-1-177 through 340:75-1-178 [REVOKED]

340:75-1-179 [AMENDED]

340:75-1-180 through 340:75-1-184 [REVOKED]

Part 12. Independent Living [NEW]

340:75-1-185 [NEW]

Subchapter 6. Permanency Planning

Part 13. Independent Living

340:75-6-115.2 [REVOKED]

(Reference APA WF # 02-47)

**AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Sections 7001-1.2, 7003-2.4, 7003-5.6, 7004-1.6, and 7004-2.1 of Title 10 of the Oklahoma Statutes.

**DATES:**

**Comment period:**

January 15 through February 14, 2003

**Public hearing:**

None held or requested

**Adoption:**  
February 25, 2003

**Submitted to Governor:**  
February 25, 2003

**Submitted to House:**  
February 25, 2003

**Submitted to Senate:**  
February 25, 2003

**Gubernatorial approval:**  
April 10, 2003

**Legislative approval:**  
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 22, 2003.

**Final adoption:**  
April 22, 2003

**Effective:**  
May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**  
N/A

**INCORPORATION BY REFERENCE:**  
N/A

**ANALYSIS:**

The revisions to Subchapters 1 and 6 of Chapter 75 reflect changes in the Oklahoma Children's Services (OCS) contracts for FY 2003. The rules provide for transferring to OCS contractors the responsibility for ongoing case management and services to families at-risk who are not involved with the court system.

340:75-1-151 is revised to provide the procedures utilized in making referrals for OCS. The referral procedures include a new position, the OCS contract liaison, who has gatekeeping authority for referrals.

340:75-1-151.1 is issued to define limits to the OCS contractor's right to decline cases.

340:75-1-151.2 is issued to define emergency services response procedures for Child Welfare (CW) staff when making referrals to OCS contractors.

340:75-1-152.3 is issued to define the procedure used by the OCS contractor to notify CW staff of the status of a referral for service.

340:75-1-152.4 is issued to define the transfer of case responsibility of voluntary family services from the CW worker to the OCS contractor.

340:75-1-152.5 through 340:75-1-152.8 are issued to include rules revoked in this Subchapter and moved to improve readability and clarify procedures in chronological order.

340:75-1-155 is issued to define a new position, the area OCS contract liaison, required for the transfer of responsibility for voluntary family services cases to OCS.

340:75-1-176 is revised to describe a new model of OCS Comprehensive Home-Based Services (CHBS) implemented in three of the FY 2003 OCS contract areas. The new model will be evaluated with the current model to determine whether there is a difference in service outcomes for families.

340:75-1-185 is issued to reflect the movement of the OCS Independent Living (IL) rule from Subchapter 6 into the OCS Section in Subchapter 1. This rule is revised to remove the language concerning the transitional living program, which no longer exists; and establish Supervised Practice Living (SPL) intensive and maintenance services.

340:75-6-115.2 is revoked. This Section is revised and moved to 340:75-1-185.

**CONTACT PERSON:**

Dena Thayer, Programs Manager, Office of Planning, Policy and Research, Oklahoma Department of Human Services, 2400 N Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4326.

**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 MAY 27, 2003:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**PART 10. OKLAHOMA CHILDREN'S SERVICES (OCS)**

**340:75-1-150. Oklahoma Children's Services**

The Oklahoma Children's Services (OCS) is a contracted services program available throughout the State of Oklahoma. Contracts are awarded to one lead agency in each of ~~44~~ the six Oklahoma Department of Human Services (OKDHS) Field Operations Division services areas. The OCS offers specific contracted ~~child welfare~~ Child Welfare home-based services designed to help ensure and enhance the safety, well-being, and social functioning of children and their families. The OCS comprises the components listed in (1) and (2) of this Section, which are described in detail in Parts 11 and 12 of OAC 340:75-1.

(1) **Comprehensive Home-Based Services (CHBS).** ~~Public Laws 96-272 and 105-89 mandate permanency planning by maintaining children in their own homes, if at all possible, or placing them with other families either temporarily or permanently. Under CHBS, home based services are is provided to a limited number of families and children, 0 - through 18 years of age, per service area each contract year through the OCS contractors in each service area. Comprehensive Home Based Services CHBS are treatment activities are directed toward the outcomes of prevention, remediation, and reunification. [OAC 340:75-1-175] safety, well-being, and permanence by providing voluntary, reunification, and maintenance of placement services.~~

(A) **Prevention.** ~~Preventive services are designed to protect and promote the welfare of all children regardless of the extent of their disability, dependence, or maltreatment. These services also prevent, remedy, or assist in resolving the underlying causes that result in maltreatment, exploitation, or delinquency of children.~~

(B) **Remediation.** ~~Remedial services prevent the unnecessary separation of children from their families or placement by identifying and addressing issues of conflict. Remedial services help families toward problem resolution and prevent the dissolution of the family or placement.~~

(C) **Reunification.** ~~Reunification services restore children who have been previously removed from their homes back to their families by providing time limited supportive services.~~

(2) **Independent Living Services (ILS).** ~~The OCS Independent Living Program ILS program aids in the transition of young people youth ages 16 to 21 years from state the custody of OKDHS to self-sufficiency and successful adult living. There are two major components in the delivery of ILS services administered by DHS. The OCS component is funded by the state and ILS provides such services as basic life skills assessments, life skills training, transitional living, and supervised practice living Supervised Practice Living. The other component is the John Chafee Independence Act which provides services to youth 18 to 21 years of age. [OAC 340:75-6-110]~~

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## **340:75-1-151. Referral procedure**

Oklahoma Children's Services (OCS) referrals are made by a primary or secondary Child Welfare worker and authorized by the gatekeeper OCS contract liaison, or Child Welfare field liaison (CWFL), or the CWFL's designee responsible for in the OCS service area where the family or child resides.

### **340:75-1-151.1. Contracting agency and the right to decline cases**

As a general rule, the contractor has no right to refuse referrals or disrupt service provision except under extraordinary circumstances and only in consultation with and the approval of the Child Welfare (CW) worker, CW supervisor, CW field liaison, and the Oklahoma Children's Services contract liaison.

### **340:75-1-151.2. Emergency service response**

Oklahoma Children's Services (OCS) may be initiated on an emergency basis, if warranted, with verbal authorization from the OCS contract liaison for Comprehensive Home-Based Services, or the Child Welfare (CW) field liaison, or designee for Supervised Practice Living. Authorization and provision of OCS emergency services do not waive the referral requirement for completion and approval of a referral in KIDS or the CW worker's participation in the intake staffing.

## **340:75-1-152. Waiting list**

In situations where When referred cases exceed service capacity, waiting lists will be maintained by both the contractor and gatekeeper Oklahoma Children's Services (OCS) contract liaison. The contractor will provide weekly updates to the OCS contract liaison as to the status of the waiting list to the gatekeeper. The gatekeeper OCS contract liaison is responsible for prioritizing referrals for service Comprehensive Home-Based Services (CHBS), and the CW field liaison or designee, for Supervised Practice Living, if when the contractor is at maximum service capacity and unable to immediately accommodate the number of referrals received. If determined necessary by the CW worker, CW supervisor, and OCS contract liaison, a CHBS case nearing completion may be terminated or suspended so that a contractor may accommodate a crisis referral. This is approved only when the family considered for termination or suspension of services has received adequate services to protect the safety of the child in the home.

### **340:75-1-152.1. Maximizing service capacity of contracted services [REVOKED]**

Contract services are concluded when case goals are met or progress toward goal achievement is no longer likely. The Child Welfare worker and contract case manager (CCM) regularly assess cases for potential closure after the first 90 days of service and at any point in the case when families or youth have not cooperated in the case plan. Guidelines for early termination of CHBS are found in OAC 340:75-1-182.

### **340:75-1-152.2. Request for extended services [REVOKED]**

(a) Although efforts are required to conclude contracted services as appropriate before standard service periods expire at six months for Comprehensive Home-Based Services (CHBS), and nine months for Supervised Practice Living (SPL), and Transitional Living (TL) programs; in certain cases, extensions beyond the standard periods may be warranted. Such requests are considered and discussed at case staffings as the final month of service approaches. When it is determined by the Child Welfare (CW) worker and contract case manager (CCM) that a service extension is warranted, and the decision is supported by the CW supervisor, a request for extension is made to the gatekeeper.

(b) Pre authorizations for extended service may also be requested with CHBS reunification referrals to assist the permanency planning specialist in eliminating multiple barriers to reunification at the outset of the permanency case. Such requests are staffed with the gatekeeper during the referral process, and when approved, reflect a pre-authorized extension.

### **340:75-1-152.3. Notification by contractor of OCS referral status**

The contractor notifies the Child Welfare (CW) worker, CW supervisor, and Oklahoma Children's Services (OCS) contract liaison of the status of the referral through electronic mail within 24 working hours of receipt of the authorized copy of Form OCS-1, Referral for Service. If the referral is accepted, the contractor provides the name of the contract case manager (CCM) or subcontractor who is assigned responsibility for the referral. If the referral is placed on a waiting list, the contractor follows procedures in OAC 340:75-1-152.

### **340:75-1-152.4. Transfer of responsibility for voluntary family services**

When the Oklahoma Children's Services (OCS) contractor accepts an OCS Comprehensive Home-Based Services (CHBS) voluntary family services case and completes an intake staffing, in accordance with OAC 340:75-1-179:

- (1) the OCS contractor assumes full case responsibility for services to the family;
- (2) the Child Welfare (CW) case is closed, except when the county director deems that the CW case needs continuing CW services; and
- (3) monitoring and oversight of the voluntary family services case is assumed by the area OCS contract liaison as described in OAC 340:75-1-155, except when the county director deems that the CW case needs continuing CW services.

### **340:75-1-152.5. Request for extended OCS services**

Generally, contracted services are concluded before the standard service period expire at nine months for Comprehensive Home-Based Services (CHBS) and Supervised Practice Living (SPL) programs. In rare cases, an extension may be warranted. A request for an extension is considered and

discussed at case staffings as the final month of service approaches. If it is determined by the Child Welfare (CW) worker and contract case manager (CCM) that a service extension is warranted, and the decision is supported by the CW supervisor, a request for extension is made to the Oklahoma Children's Services (OCS) contract liaison, CW field liaison, or designee.

### **340:75-1-152.6. OCS maintenance level services**

(a) **Maintenance level services for Comprehensive Home-Based Services (CHBS).** Maintenance level CHBS services are authorized by the Oklahoma Children's Services (OCS) contract liaison when a family has achieved most of their risk-related goals or when they are required to participate in other ongoing services as part of a Child Welfare treatment plan or court order. Maintenance services require a minimum of one hour monthly contractor face-to-face contact between the primary caregiver and any child age five and younger. Additional visits may be arranged by the contract case manager (CCM) with a paraprofessional, when appropriate.

(b) **Maintenance level services for Supervised Practice Living (SPL).** A youth who meets criteria may be approved for maintenance level services at the outset of SPL or following a period of SPL intensive services after the youth has gained stability and self-sufficiency. SPL visits are reduced to two contractor face-to-face weekly contacts during the period of maintenance level services. One weekly visit must be in the youth's residence. In addition, the youth must be contacted by phone or required to call the CCM two days per week.

### **340:75-1-152.7. OCS case suspension**

If a youth or family member is unavailable temporarily, such as when a participant is scheduled for in-patient drug and alcohol treatment, surgery, or during planned trips away from home, the Oklahoma Children's Services (OCS) Comprehensive Home Based Services (CHBS) or Supervised Practice Living (SPL) case may be suspended.

### **340:75-1-152.8. Guidelines for the early termination of OCS**

(a) In Comprehensive Home Based Services (CHBS), the contract case manager (CCM) may recommend early termination of services when case goals are met, further progress is unlikely, or when services have not been effective in controlling risk. The CCM's observations regarding risk are documented in the record as appropriate and reported to the Child Welfare (CW) worker, or, in voluntary family services cases, to the Oklahoma Children's Services (OCS) contract liaison, for possible termination of CHBS when:

- (1) there is lack of cooperation by the family;
- (2) the risk to the child remains high and the abusive parent(s) has not developed adequate controls; or
- (3) there is new abuse or injury.

(b) In situations in which a youth in Supervised Practice Living (SPL) fails to follow program requirements, early termination of the service may be considered.

(c) Early termination and suspension decisions are made jointly by CW and CHBS or SPL staff.

### **340:75-1-152.9. Oklahoma Children's Services (OCS) contractor's notification to Child Welfare (CW) of increased risk**

The contract case manager (CCM) is required to submit a Critical Incident Report (CIR) to Child Welfare (CW) regarding a Comprehensive Home-Based Services (CHBS) or Supervised Practice Living (SPL) case when the safety or well-being of a child or youth in the custody of the Oklahoma Department of Human Services (OKDHS) is in question. The CIR is a risk alert that may require action by CW to protect a child or youth. A determination whether to continue to contract services is also considered. The CIR is not used when the CW worker has prior knowledge of the risk circumstances. For example, a CIR is not required when the information is disclosed to the CCM by CW staff or if the CCM and CW worker were both present when the new risk was identified.

### **340:75-1-153. Contracting agency and the right to decline cases [REVOKED]**

~~As a general rule, the contractor has no right of refusal to accept cases except under extraordinary circumstances and only in consultation with and approval of the Child Welfare (CW) referring worker or supervisor and the Child Welfare field liaison (CWFL) or gatekeeper.~~

### **340:75-1-154. Special funding**

Special funding is available for the purchase of concrete goods and services that are necessary to ~~help preserve, remediate, or reunify~~ for the family. Each contractor has special funds budgeted in his or her contract to be utilized only when assistance from other community resources is not available or cannot be accessed in a timely manner to resolve family crisis situations. Special funding is also made available to youth moving into Supervised Practice Living (SPL) to purchase household goods and pay rent and utility deposits.

### **340:75-1-155. Role of the OCS contract liaison**

The Oklahoma Children's Services (OCS) contract liaison reports to the area director in the respective Oklahoma Department of Human Services (OKDHS) Field Operations Division area. The OCS contract liaison works closely with the Child Welfare (CW) field liaisons to gatekeep all referrals to the OCS contractor, monitor OCS contractor case records, and enhance coordination and communication between OKDHS county offices and OCS contract staff. The area OCS contract liaison provides oversight for the transfer of case responsibility of voluntary family services cases to the OCS contractor. Through case monitoring, the OCS contract liaison ensures that families participating in voluntary family services cases receive the services they need to protect their children, including further action by CW, if actual or threatened harm to a child's safety or well-being occurs during the service period. The duties of the OCS contract liaison include:

- (1) gatekeeping;
- (2) training of OKDHS staff and contract staff;
- (3) consultation for all voluntary family services cases;

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- (4) case monitoring and auditing of active OCS contracted cases; and
- (5) contract data maintenance and tracking.

## PART 11. COMPREHENSIVE HOME-BASED SERVICES (CHBS)

### 340:75-1-175. Program overview

Comprehensive Home-Based Services (CHBS) is a behaviorally oriented, short term, in-home crisis intervention and family education program designed to preserve, strengthen, and restore the integrity of the family unit. The primary treatment emphasis is teaching skills to all family members so that the family unit learns to effectively function on its own. Child Welfare ~~will be~~ is the only gateway for referral to this service. Services are provided without regard to family income.

### 340:75-1-176. Goals

Comprehensive Home-Based Services (CHBS) assists families in crisis by providing a contract case manager (CCM) who offers a wide range of services in the home. The Oklahoma Children's Services (OCS) ecobehavioral model (CHBS-EB) is provided in areas III, IV, and V of the Oklahoma Department of Human Services (OKDHS) Field Operations Division for comparison to the OCS standard care model (CHBS-SC) of areas I, II, and VI. The goals of ~~the program~~ CHBS under either model are to prevent the child's removal from the home, protect the child's connection to family, avert an adoption or placement disruption, or to promote reunification of the child with his or her parents parent(s). All CHBS activities are designed to support the outcomes of safety, well-being, and permanence for the child.

### 340:75-1-177. Target population [REVOKED]

~~The target population includes:~~

- ~~(1) families of abused and neglected children who are at imminent risk of removal from their homes;~~
- ~~(2) families of children placed in substitute care for whom the case plan goal is to return to their own home;~~
- ~~(3) families who have adopted children whose adoptive placement is at risk of disruption; and~~
- ~~(4) children in family foster care or kinship placements where compelling issues or acting out behaviors may cause placement disruption and the child's move to a more restrictive placement.~~

### 340:75-1-178. Scope [REVOKED]

~~Comprehensive Home Based Services, (CHBS) is a contracted services program that can only be accessed by families referred by Child Welfare (CW), provided by a selected lead agency or one of its sub-contractors. The lead agency administers the program under specific guidelines and standards required by the Division of Children and Family Services.~~

### 340:75-1-179. Service components

The contracting agency is responsible for providing or arranging for the provision of a ~~wide array of~~ services to families in accordance with the ~~individual child~~ child's and family's specific needs. The components of Comprehensive Home-Based Services (CHBS) are:

- (1) ~~Intake~~ intake staffing. The initial meeting of the family with Child Welfare (CW) and CHBS staff communicates the purpose of the specific contracted service activities in reducing risk;.
- (2) ~~Multi-level~~ assessment. A multi-level assessment is completed with all families referred for services within 30 calendar days of ~~referral~~ the intake staffing;
- (3) ~~Structured~~ structured intervention. Structured intervention is based on a plan of service, the Family Intervention Plan (FIP), which includes CW risk-related issues and needs identified on the Family Inventory of Needs Determination (FIND) linked to clear, measurable short and long term goals and service activities;.
- (4) ~~Parent~~ parent-child visitation. Supervised, planned parent-child visitations are conducted in cases where reunification is the primary goal. The contract case manager (CCM) works with the CW worker and ~~foster resource~~ family or other caregivers toward reconnecting to reconnect the child in out-of-home placement with his or her family through a series of progressive parent-child visitations. Planned visitation is ~~to be~~ consistent with the court-approved ~~Treatment Plan~~, Form CWS-KIDS-10, Treatment Plan, or visitation that is otherwise ordered by the court. The visitation schedule is developed by the CCM in conjunction with the CW worker. Reunification occurs only when the identified risks to the child are resolved so as to ensure the child's safety and with the court's approval;.
- (5) ~~Advocacy~~ advocacy. Advocacy is provided through acquiring, coordinating, and monitoring the use of other community resources needed to meet the family's needs;.
- (6) ~~Information~~ information, education, and referral. Information, education, and referral for all families occur as needed. Information is shared in regard to the availability of needed community services, eligibility criteria, application procedures, and similar topics. Education is provided in parenting skills, household management, and other areas pertinent to healthy family functioning. Referrals are made to health care and other service providers, as soon as the need is identified;.
- (7) ~~Case~~ case management. Case management is the method of arranging, coordinating, monitoring, evaluating, and advocating services and resources on behalf of the client family within one or several agencies. Service delivery is culturally and linguistically appropriate; and
- (8) ~~Special~~ special funding. Special funding ~~can~~ may be provided, if needed, in accordance with {OAC 340:75-1-154}.

**340:75-1-180. Determining appropriate child welfare referrals to Comprehensive Home-Based Services (CHBS) [REVOKED]**

~~(a) **Guidelines for referral.** Guidelines are provided to assist staff in determining what families will be best served through Comprehensive Home-Based Services (CHBS). A formal staffing with the CW supervisor is required for exceptions to the referral guidelines. OCS gatekeepers may also request a justification for utilizing CHBS under such circumstances.~~

~~(b) **Safety response.** Before referring a family for CHBS, the first and most important task of the CW worker is to ensure the safety of the child during an abuse or neglect investigation or assessment. Refer to OAC 340:75-3-10.1 through 340:75-3-10.3 for further information on safety determination and response. To protect the child in the interim, it may be necessary to recommend protective custody as per OAC 340:75-3-10.1(b), until the worker completes the initial assessment of the family.~~

**340:75-1-181. Eligibility requirements for Comprehensive Home-Based Services [REVOKED]**

~~Comprehensive Home-Based Services (CHBS) offers an intensive, short term educational approach that is not appropriate or effective with all families involved with Child Welfare (CW). Families with chronic problems may be better served by other, longer term supports. Families who have received CHBS in the past and failed to meet goals because of a lack of cooperation may be offered a trial service period or may be denied service by the gatekeeper [OAC 340:75-1-182]. The CW worker notes in Form OCS-1 any mitigating circumstances justifying the use of CHBS under these circumstances and documents that requirements in (1) to (5) of this Section have been met.~~

- ~~(1) A determination has been made that at least one child in the family is at imminent risk of removal from the home and that the risk will escalate unless intensive services are provided.~~
- ~~(2) All other less intensive services within the community have been exhausted or are not sufficient to avert placement.~~
- ~~(3) The CW worker has seen the family within the last five working days of making the referral, discussed the CHBS program with the parents, and obtained the agreement of a parent or caretaker to work with the contract case manager (CCM).~~
- ~~(4) For reunification services, at least one child is in out of home care who is to return to the home within three to nine months.~~
- ~~(5) A permanent placement, adoptive, or trial adoptive home is at risk of disruption due to compelling issues or acting out behavior of the child. This is not a crisis response service for volatile emergency situations.~~

**340:75-1-182. Guidelines for the early termination of Comprehensive Home-Based Services [REVOKED]**

~~(a) Occasionally it may be necessary for the contract case manager (CCM) to recommend early termination of services. The CCM's observations regarding risk are noted and reported to Child Welfare (CW) for possible termination of Comprehensive Home-Based Services (CHBS) when:~~

- ~~(1) There is lack of cooperation by the family.~~
- ~~(2) The risk to children remains high and the abusive parent has not developed adequate controls.~~
- ~~(3) There is new abuse or injury.~~

~~(b) The decision regarding Early termination or suspension is made jointly by CW and CHBS staff regardless of whether the report was made to the Child Abuse Hotline or initiated by means of a Critical Incident Report.~~

**340:75-1-183. Role of the Child Welfare (CW) worker [REVOKED]**

~~(a) Comprehensive Home-Based Services (CHBS) is a three-way partnership of family, contract, and Child Welfare (CW) staff. The CW worker encourages the family to work on the issues of risk with the contract case manager (CCM) and steps back into a supportive role while the family and CCM engage in a working relationship. In particular, after the intake staffing, voluntary cases may be managed by the contract agency with minimal guidance from the CW worker via monthly case staffings.~~

~~(b) Coordination and consultation regarding the CHBS case is the responsibility of both the CW worker and contract staff. In addition to monthly case staffings, the CCM will have an ongoing dialogue with the CW worker about case progress, services provided, and treatment outcomes.~~

~~(c) Additional tasks are required of CW and contract staff in the management of CHBS reunification cases.~~

**340:75-1-184. Role of the CHBS Contract Case Manager (CCM) [REVOKED]**

~~(a) The Comprehensive Home-Based Services (CHBS) program is designed to intervene with families at the point of crisis when families are most receptive to change. (b) The contract case manager (CCM) provides ongoing input as to the progress of the case and other issues relative to the case through telephone contact, monthly staffings, and required quarterly reports.~~

~~(c) Ongoing family intervention services will be delivered until the parents have achieved the goals of the Family Intervention Plan. The maximum length of service delivery is six months unless an extension is pre-authorized, although some families may require a shorter intervention.~~

~~(d) Because of the time-limited nature of CHBS, discussions of case closure with the family is a part of casework activity prior to the planned closure.~~

**PART 12. INDEPENDENT LIVING**

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## **340:75-1-185. Oklahoma Children's Services (OCS) - Independent Living**

The Independent Living (IL) component of Oklahoma Children's Services (OCS) provides an expanded continuum of care for eligible youth. These services are accessed by referral to the appropriate OCS contractor in accordance with OAC 340:75-1-151. The services provided through OCS are listed in (1) through (3) of this Section. Each service has specific eligibility requirements.

(1) **Basic life skills assessment.** The basic life skills assessment is an assessment of level of functioning in relation to basic life skills. [OAC 340:75-6-114] The assessment is completed by the OCS contractor within 30 working days of referral following determination of service need. Eligible youth are 16 to 18 years of age, in Oklahoma Department of Human Services (OKDHS) custody, and, upon reaching age 18, request continued services.

(2) **Basic life skills development and training.** Services are initiated by the OCS contractor within 30 calendar days of referral following determination of service need. Eligible youth are 16 to 18 years of age, in OKDHS custody, and, upon reaching age 18, request continued services. Services are packaged as needed to assist youth in the development of skills in, at a minimum, the areas of:

- (A) personal and interpersonal skills, including responsible decision-making;
- (B) job skills, including job preparation, job seeking, and job maintenance;
- (C) money management, including consumer awareness;
- (D) housing and transportation;
- (E) health services, personal hygiene, appearance, and sexuality;
- (F) planning for the future;
- (G) community involvement and use of community resources;
- (H) food management;
- (I) legal issues and knowledge of legal rights; and
- (J) prevention of drug and alcohol abuse.

(3) **Supervised Practice Living (SPL) - intensive supervision and maintenance.** These services are provided to youth who require a supervised and supportive environment as a prelude to independent living. Youth referred for SPL, intensive supervision or maintenance, are eligible for up to a nine-month period. Under exceptional circumstances, services may be extended an additional three months for a maximum of 12 months on a case-by-case basis dependent upon funding and availability.

- (A) A youth who meets the criteria for SPL, intensive supervision or maintenance, is in temporary or permanent custody of OKDHS in out-of-home care, and 17 years and 3 months (17.3) to 18 years of age.
- (B) A youth in OKDHS custody in out-of-home care, upon reaching the age of majority, may request services on a voluntary basis up to the age of 21 in order to complete high school or General Educational Development (GED) programs. Eligibility ends with

the youth's 21st birthday or attainment of the youth's high school diploma or GED, whichever comes first.  
(C) A youth in temporary or permanent custody, age 17.3 to 18 years, must have court approval prior to placement in SPL.

(D) SPL, intensive supervision or maintenance, is planned as the youth's final placement, begins nine months before exiting care, and is part of the youth's IL plan.

(E) Subsidized payment to assist the youth in the transition to independence provides for rent, housing, utilities, groceries, special funding, life skills training, and incidental needs. The youth must:

- (i) have a life skills assessment and an IL plan;
- (ii) have demonstrated stability in behavior and a willingness to adhere to the expectations of the program, with no record of:
  - (I) absence without leave (AWOL) or criminal conviction within the last six months;
  - (II) active drug or alcohol abuse within the previous 90 days;
  - (III) debilitating emotional condition(s); and
  - (IV) current delinquent charges at the time of admission;
- (iii) participate in four to eight weeks of life skills prior to or while participating in the SPL program; and
- (iv) be employed full-time or involved in full-time academic or vocational training or a combination of the two.

## SUBCHAPTER 6. PERMANENCY PLANNING

### PART 13. INDEPENDENT LIVING

#### **340:75-6-115.2. Oklahoma Children's Services (OCS) [REVOKED]**

The Independent Living (IL) component of Oklahoma Children's Services (OCS) provides an expanded continuum of care for eligible youth. These services are accessed by referral to the appropriate OCS contractor as per OAC 340:75-6-150. The services provided through OCS are listed in (1) (4) of this Section. Each service has specific eligibility requirements.

- (1) **Basic life skills assessment.** The basic life skills assessment is an assessment of level of functioning relevant to basic life skills. [OAC 340:75-6-114] The assessment is completed by the contractor within 30 days of referral following determination of service need. Eligibility includes all DHS custody youth 16 to 18 years of age, and youth who, upon reaching 18, request continued services.
- (2) **Basic life skills development and training.** Services are initiated by the contractor within 30 days following determination of need. Eligibility includes all DHS custody youth 16 to 18 years of age, and youth who,

upon reaching 18, request continued services. Services are packaged as needed to assist youth in development of skills in, at a minimum, the areas of:

- (A) personal and interpersonal skills, including responsible decision making;
- (B) job skills, including job preparation, job seeking, and job maintenance;
- (C) money management, including consumer awareness;
- (D) housing and transportation;
- (E) health services, personal hygiene, appearance, and sexuality;
- (F) planning for the future;
- (G) community involvement and use of community resources;
- (H) food management;
- (I) legal issues and knowledge of legal rights; and
- (J) prevention of drug and alcohol abuse.

(3) ~~Transitional Living (TL).~~ Transitional Living assists youth who need preparation in the passage from out of home care to apartment living. Approved youth live in a boarding home situation, transitional housing, independent apartment, or shared housing with adult assistance accessible on a 24 hour basis. Intensive IL skills training and mentoring are provided. Participation in both the TL and Supervised Practice Living (SPL) programs, when combined, meets the nine month eligibility period allowed for these programs. Youth who meet the criteria for TL are DHS temporary or permanent custody youth in out of home care, 17 years and 3 months to 18 years of age and youth who were in DHS custody and, upon reaching the age of majority, request services on a voluntary basis to complete high school or other educational programs. Temporary custody youth, age 17 years and 3 months to age 18, must have parental consent or court approval. Eligibility ends with the youth's 21st birthday. In addition, the youth must have:

- (A) a life skills assessment and an IL plan;
- (B) demonstrated stability in behavior and a willingness to adhere to the expectations of the program; such as no AWOLs or criminal convictions within the last six months, no active drug or alcohol abuse within the previous 90 days and no current delinquent charges at the time of admission; and
- (C) participated in four to 12 weeks of life skills prior to or while participating in the TL program.

(4) ~~Supervised Practice Living (SPL).~~ These services are provided to youth who require a supervised and supportive environment as a prelude to independent living. SPL is planned by the youth and worker as the youth's final placement nine months before exiting care and is included in the creation of the IL plan. Eligibility for SPL is the same as eligibility for TL with the additional requirement that the youth is employed full time or involved in full time academic or vocational training or a combination of the two. Subsidy payments for the costs involved in assisting the youth in the transition to independence are

subsidized as outlined in (A) -- (C) of this paragraph, and do not exceed nine months cumulatively.

- (A) Apartment living or shared housing expenses, such as:
  - (i) rent, not to exceed \$300 per month;
  - (ii) basic gas, electricity, water, and telephone services, not to exceed \$100 per month for all utility costs;
  - (iii) groceries, not to exceed \$100 per month, with the exception of an added \$50 per month for each minor child of the youth who also resides in the home; and
  - (iv) special funding of \$750 per youth, one time only, which can be used for apartment or utility deposits, used furniture, or other expenses as needed;
- (B) Expenses incurred for housing in boarding homes, room and board facilities, or transitional type housing. Reimbursement for actual costs cannot exceed \$325 per month for room only or \$425 per month for room and board; and
- (C) expenses incurred for temporary shelter, such as YMCA or YWCA.

[OAR Docket #03-740; filed 4-23-03]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 110. LICENSING SERVICES**

[OAR Docket #03-739]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. General Provisions  
Part 1. Licensing Services - Child Care  
340:110-1-5 through 340:110-1-6 [AMENDED]  
340:110-1-8.3 through 340:110-1-9.1 [AMENDED]  
340:110-1-9.3 through 340:110-1-10 [AMENDED]  
340:110-1-20 [AMENDED]  
(Reference APA WF # 02-46)

**AUTHORITY:**  
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and the Oklahoma Child Care Facilities Licensing Act, Sections 401 et seq. of Title 10 of the Oklahoma Statutes.

**DATES:**  
**Comment period:**  
January 15 through February 14, 2003

**Public hearing:**  
None held or requested

**Adoption:**  
February 25, 2003

**Submitted to Governor:**  
February 25, 2003

**Submitted to House:**  
February 25, 2003

**Submitted to Senate:**  
February 25, 2003

**Gubernatorial approval:**  
April 10, 2003

**Legislative approval:**  
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 22, 2003.

**Final adoption:**  
April 22, 2003

# Permanent Final Adoptions

## Effective:

June 1, 2003

## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATION BY REFERENCE:

N/A

## ANALYSIS:

The revisions to Subchapter 1 of Chapter 110 improve the program and services provided to child care facilities by the Oklahoma Department of Human Services (OKDHS) licensing field staff. Revisions clarify current OKDHS rules and Division of Child Care practice to provide direction to licensing staff who regulate and consult with licensed child care facilities to meet requirements for licensure.

340:110-1-5 is revised to add that licensing staff refer to Section 403 of Title 10 of the Oklahoma Statutes to determine exemptions from the Licensing Act.

340:110-1-8.3 is revised to specify that the level of training required is: Tier I, II, or III for staff; Level III or higher on the Early Childhood Education Professional Development Ladder for a master teacher; and attending approved training on program evaluation and completing a self-assessment tool for director or staff person. The existing provision that the child care program for a two star center is assessed, upon initial licensure and every two years thereafter, by an independent evaluator using a rating scale approved by OKDHS is moved to this Section.

340:110-1-9 is revised to specify that when there is a change in ownership or change in form of business organization of a child care center, part-day program, or school-age program, the case is closed and a new application is obtained; and when a facility requests an increase or decrease in licensed capacity it is documented on Form OCC-3, Child Care Center Monitoring Report.

340:110-1-9.1 is revised to specify the monitoring required by OKDHS at an approved out-of-state facility for a child who qualifies for the higher child care rate and is living in Oklahoma.

340:110-1-9.3 is revised to specify that during a monitoring visit, if licensing staff is concerned that the health, safety, or well-being of children is at imminent risk, the licensing supervisor or state office staff is contacted immediately.

340:110-1-9.4 is revised to add that an emergency order issued by OKDHS remains in effect until rescinded or the facility license is denied or revoked.

340:110-1-9.5 is revised to add that when a consent agreement is entered into by a facility in lieu of license denial or revocation, the facility must provide to OKDHS the names and addresses of new enrollees so that licensing staff may mail them a copy of the consent agreement and cover letter.

340:110-1-20 is revised to include that the recipient of a scholarship for professional development training who fails to meet certain requirements and does not reimburse OKDHS for expenses will not be permitted to enroll in further courses until the debt is paid in full.

## CONTACT PERSON:

Dena Thayer, Programs Manager, Office of Planning, Policy and Research, Oklahoma Department of Human Services, 2400 N Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4326.

**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 JUNE 1, 2003.**

## SUBCHAPTER 1. GENERAL PROVISIONS

### PART 1. LICENSING SERVICES - CHILD CARE

#### 340:110-1-5. Inquiries

(a) Inquiries regarding the licensing of child care facilities are referred to the Division of Child Care (DCC) licensing staff in whose geographical area the inquirer is located. The referral

includes the name, address, telephone number, and type of care the facility is giving or planning to give. Upon receipt of an inquiry, the licensing staff provides the inquirer with a copy of the applicable requirements and, when appropriate, makes referrals to other agencies involved in licensing child care facilities, such as the fire department, health department, and local city regulatory offices.

(b) Inquiry records are maintained in the licensing staff's office. Inquiry information is sent to the supervisor on request. When the inquirer indicates an interest in becoming licensed, the licensing staff:

(1) determines the necessity for a license according to Section 403 of Title 10 of the Oklahoma Statutes;

(~~2~~) reviews the requirements with the individual to help him or her decide if these can be met;

(~~3~~) ascertains the qualifications of the inquirer to operate a facility; and

(~~4~~) provides consultation to assist in the development of a child care facility which can provide quality care.

#### 340:110-1-6. Application process

(a) **Application.** The licensing staff provides the appropriate application to persons interested in licensure. Child care facilities on Indian tribal land do not require a state license but may request licensure. Facilities that are licensed by a tribe with whom the Agency Oklahoma Department of Human Services (OKDHS) has a cooperative licensing agreement and that care only for Indian children do not require a state license, but may request licensure. If requested, a family child care home application is filed and a license issued to two people who live in the home. References must be obtained for both persons, and both must demonstrate compliance with requirements.

(1) **Child care provider contract.** The licensing staff advises the child care facility of the opportunity to contract with ~~the Agency~~ OKDHS for the care of children whose families receive child care assistance. The licensing staff documents that a child care contract promotional flyer is provided to the facility with contact information for the county child care liaison. ~~The Department~~ OKDHS may contract with a child care facility in another state when a client residing near the Oklahoma border elects to use an out-of-state facility. The licensing staff responsible for the county in which the client resides verifies the facility is licensed or registered and in compliance with the Civil Rights Act by contacting the state agency responsible for licensing.

(2) **Reopening a family child care home case.** If a family child care home has been closed for less than a year and had a record of compliance prior to closure, the licensing staff may recommend license issuance after one compliant monitoring visit, utilizing previous references. Criminal history investigations must have been obtained within the last year.

(3) **Reopening a child care center, part-day children's program, or school-age program.** If a child care center has been closed and the same owner wishes to reopen, a new application must be completed.

(4) **Computer checks on license applicants.** Computer checks to identify prior involvement with ~~the Department~~ OKDHS are completed on all adults ~~signing who sign~~ the application for a family child care home license and on the owner of a child care center, part-day children's program, or school-age program. When there has been prior involvement with Child Welfare, the licensing staff reviews the case for information regarding the person's ability to meet licensing requirements. Other cases are reviewed only if concerns exist. If the provider's medical information is confidential, the licensing staff may request the information from the provider. If concerns exist, the provider is asked to sign ~~the Department's release of medical information~~, OKDHS Form ADM-60, Request for Release of Information.

(5) **Family child care homes certified to provide foster care.** A caregiver certified to provide foster care may be licensed as a family child care home. The approval for dual service is made by the licensing supervisor, based upon the recommendation of the licensing staff and foster care worker of the child-placing agency. The decision for approval is:

- (A) based upon the number, ages, and specific needs of potential child care children and foster care children;
- (B) documented in the case record; and
- (C) reviewed with the provider and foster care worker at license renewal or more often if concerns exist.

(6) **Status.** The facility may be granted temporary authorization to operate on application status or on a six-month permit. The licensing staff may recommend a six-month permit when the conditions required for issuance of a six-month permit described in OAC 340:110-1-8(a) are met. If the licensing staff determines that the conditions have not been met but the non-compliance does not place children at risk of immediate harm, the facility may be allowed to operate on application status. While a child care facility is operating on application status:

- (A) the licensing staff conducts a monitoring visit at least every two months;
- (B) the procedures found in OAC 340:110-1-9.3 are followed if non-compliance with licensing requirements is observed during the monitoring visit. A plan of correction, including an agreed-upon time period for correction of the non-compliance, is documented; and
- (C) the licensing staff consults with the licensing supervisor if the facility is unable or unwilling to meet licensing requirements after operating on application status for six months.

(b) **Withdrawal of application.** If a child care facility applicant wishes to withdraw the application prior to issuance of a license and the licensing staff confirms that no children are in care, the licensing staff closes the case.

**340:110-1-8.3. Certification of facilities to receive a differential quality rate**

(a) **Purpose.** Certification is required for a provider to receive a differential quality rate for children whose families are receiving child care assistance through the Oklahoma Department of Human Services (OKDHS).

(b) **Criteria for child care center certification levels.** The levels of certification for child care centers are contained in this subsection.

(1) **Criteria for one star centers.** A center operating on a permit, license, or provisional license is designated as a one star center.

(2) **Criteria for one star plus centers.** A center can operate on one star plus status for a total of 24 months; these months are not required to run consecutively. To be approved as a one star plus center, a center must complete and submit ~~form~~ Form OCC-25, Request for Child Care Center Star Certification, and meet all the requirements in (A) - through (C) of this paragraph. To maintain this status after one year, the center must complete and submit Form OCC-25 30 days prior to star certification expiration date and meet the requirements in (A) - through ~~(G)~~(F). At the end of two years, the center must be approved as a two star center or return to one star status. If the new criteria cannot be met at 12 or 24 months, a facility may request an extension of time to comply as set forth in (g) of this Section. A return to one star level based upon failure to submit Form OCC-25 with supporting documentation does not constitute a reduction in certification level as set forth in (h) of this Section. If a reduction is warranted for this purpose, the licensing staff sends a letter, Form OCC-63, One Star Plus Certification Expiration, documenting the reduction in certification level to one star.

(A) **Licensing status.** The program must have a license, provisional license, or permit and must not have a history of numerous, repeated, or serious non-compliance with applicable licensing requirements. For the purposes of star certification the definitions of numerous, repeated, or serious non-compliance listed in (i) - through (iii) of this paragraph ~~will~~ apply.

(i) Numerous non-compliance is defined as any monitoring visit with six or more items documented as non-compliant on the monitoring report for a facility with a licensed capacity of less than 60 or seven or more items for a facility with a licensed capacity of 60 or more.

(ii) Repeated non-compliance is defined as three or more documented incidents of non-compliance with the same requirement within the last 12 months. However, for missing immunizations to be considered a repeat non-compliance, they must be regarding the same child.

(iii) Serious non-compliance is defined as a non-compliance with licensing requirements which exposes children to conditions which present an imminent risk of harm. Some examples of serious non-compliance are violations of

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requirements for: staff-child ratio; supervision of children; prohibited disciplinary actions; licensed capacity; transportation of children without proper restraints; water activities, pools and other water hazards; multiple hazards; weapons; failure to report child abuse; allowing access to children by a person prohibited due to criminal record, health, or behavior; unauthorized provision of medication to children; room temperatures exceeding 85 degrees; and use of unguarded or unapproved heat sources.

(B) **Director qualifications.** At initial approval the director must have documentation of 40 hours of ~~formal~~ training, within the last two years, ~~from the list of DHS approved training~~. At least 20 of those ~~approved~~ hours must be ~~from designated sources~~ Tier II or Tier III training in administration and management. After 12 consecutive months of star certification the director must have had a total of 80 hours of ~~formal~~ training within the last three years. At least 40 of those hours must be ~~from designated sources~~ Tier II or Tier III training in administration and management. If a new director is hired, the director must have documentation of 40 hours of ~~formal~~ training, within the last two years, ~~from the list of DHS approved training~~. At least 20 of those hours must be ~~from designated sources~~ Tier II or Tier III training in administration and management. After 12 consecutive months of employment the director must have had a total of 80 hours of ~~formal~~ training within the last three years. At least 40 of those hours must be ~~from designated sources~~ Tier II or Tier III in administration and management. In subsequent years, directors must have documentation of 20 hours of job-related training per employment year ~~from the list of DHS approved training~~. In-service training such as videos and on-site staff training is counted for a maximum of six hours per year.

(C) **Learning environment.** The center has current weekly lesson plans appropriate for the developmental needs of each group of children. Space for children two years of age and older is arranged in interest areas to facilitate a variety of activities, including block building, dramatic play, manipulative play, art, and book reading. Teachers read to children a minimum of 15 minutes each day.

(D) **Staff training.** Teaching staff employed at the facility for at least 12 months must have 20 hours of Tier I, II, or III training per employment year from the list of DHS approved training. This includes part-time staff but not temporary substitutes. In-service training such as videos and on-site staff training is counted for a maximum of six hours per year. This training can be used to meet minimum licensing requirements. The director assists teachers in selecting training that enhances their overall professional growth based upon a review of the teacher's training record.

(E) **Staff compensation.** The program must have a salary scale with increments based on level of education, credentials, ~~training~~, and years of early childhood experience. The director evaluates staff, in writing, at least annually, and compensation is based upon consideration of education, experience, and performance.

(F) **Parent involvement.** The center involves parents in the activities described in (i) - through (vii) of this subparagraph.

(i) A written system is established and maintained for sharing daily happenings and changes in a child's physical or emotional state. When a child enters kindergarten, a verbal system may be used.

(ii) Parents are welcomed into the center at all times, for example, to observe, eat lunch with a child, or volunteer in the classroom.

(iii) Parent conferences are held at least annually and at other times as needed to discuss children's progress, accomplishments, and difficulties.

(iv) There is a parent resource area with books, pamphlets, or articles on parenting.

(v) Parent meetings with guest speakers or special events are held at least twice per year, for example, open house, brown bag lunch, family pot-luck dinners, children's programs.

(vi) Parents are informed of the center's program through a parent's bulletin board, regular newsletter, or parent handbook.

(vii) Parents participate in program and policy development through board involvement, planning meetings, or questionnaires.

~~(G) **Program evaluation.** The program is assessed and program goals established every two years. The assessment is conducted by an independent evaluator using all applicable DHS approved rating scales to determine the day to day quality of care provided to children. The initial assessment is scheduled within the first 12 months of the star certification. Staff and parents are surveyed to identify strengths and weaknesses of the program and evaluate the program's effectiveness in meeting the needs of children and parents.~~

(3) **Criteria for two star centers.** To be approved as a two star center, a center must complete Form OCC-25, be accredited by an approved national accrediting body, and not have numerous, repeated, or serious non-compliance with licensing requirements, or ~~and~~ meet all one star plus criteria, and the criteria for master teachers described in (A) ~~through~~ (D) (E), and the program evaluation criteria as described in (F) of this paragraph, or be accredited by an approved national accrediting body and not have numerous, repeated, or serious non-compliance with licensing requirements.

(A) Master teachers support other teaching staff with responsibilities such as program development,

weekly lesson plans, use of space and equipment, interactions with parents, and program evaluation.

(B) There is a master teacher for every 30 children of the licensed capacity. Effective July 1, 2002, during the second and subsequent year as a two or three star center, there must be a master teacher for every 20 children. This number does not include school-age children if the majority of children in care are under five years of age. Centers licensed as school-age programs or programs where the majority of children are school-age must have a master teacher for every 40 children of the licensed capacity.

(C) The director may only be counted as a master teacher if the licensed capacity minus school-age children is 30 or less. The director can be counted as a master teacher in centers licensed as a school-age program or programs where the majority of children are school-age.

(D) Master teachers must be employed on a full-time basis and meet Level III or higher on the Early Childhood Education Professional Development Ladder or meet one of the requirements in (i) - through (vi) of this subparagraph. Master teachers must currently meet and maintain either:

- (i) an occupational child care competency certificate for lead teacher through an Oklahoma technology center and three months of satisfactory full-time experience in a licensed or legally exempt child care setting;
- (ii) a current Child Development Associate (CDA) or Certified Childcare Professional (CCP) credential;
- (iii) a two year college ~~Certification Certificate~~ Certificate of Mastery;
- (iv) ~~60~~ 30 credit hours of Tier III training from an accredited college or university including 12 credit hours in early childhood education, child development, or a ~~closely an approved~~ related subject;
- (v) a four year degree in ~~elementary education or special education~~ with six college credit hours of Tier III training in child development, early childhood education, or a ~~closely an approved~~ related subject; or
- (vi) a two or four year degree in early childhood education or child development.

(E) In centers licensed as school-age programs or programs where the majority of children are school-age, the master teacher must currently meet and maintain either:

- (i) one of the qualifications in (D); however, a degree or coursework in (iv) - through (vi) may also be in elementary education, recreation, or other coursework that supports working with the school-age child; or
- (ii) 120 clock hours of school-age related Tier I, II, or III training from the list of DHS approved training within the last five years, three years of

full-time experience in a licensed school-age child care program or legally exempt school-age child care program, and every two years a minimum score of 5.0 on the School-Age Environment Rating Scale in a classroom where the master teacher is the lead teacher.

(F) The director or staff person from the facility has attended approved training on program evaluation and completed a self-assessment tool. Staff and parents are surveyed to identify strengths and weaknesses of the program and evaluate the program's effectiveness in meeting the needs of children and parents. Program goals are established and updated every two years. The program is assessed by an independent evaluator using all applicable rating scales approved by OKDHS to determine the day to day quality of care provided to children. The initial assessment is scheduled upon approval of two star status and subsequently every two years.

(4) **Criteria for three star centers.** To be approved as a three star center, a center must meet all two star center criteria and be accredited through an approved national accrediting body. When an existing two star facility becomes accredited, the provider completes Form OCC-25 with proof of accreditation and documentation reflecting any changes in the previous two-star certification criteria.

(c) **Criteria for family child care home certification levels.** The levels of certification for family child care homes are contained in this subsection.

(1) **Criteria for one star homes.** A home operating on a permit, license, or provisional license is designated as a one star home.

(2) **Criteria for one star plus homes.** A home can operate on one star plus status for a total of 24 months; these months are not required to run consecutively. To be approved as a one star plus family child care home or large family child care home, a home must complete and submit Form OCC-27, Request for Family Child Care Home Star Certification - Differential Quality Level, and meet the requirements in (A) - through (C) of this paragraph. To maintain this status after one year, the home must complete and submit Form OCC-27 30 days prior to star certification expiration date and meet the requirements in (A) - through ~~(E)~~(D) of this paragraph. At the end of two years, the home must be approved as a two star home or return to one star status. If the new criteria cannot be met at 12 or 24 months, a facility may request an extension of time to comply as set forth in (g) of this Section. A return to one star level based upon failure to submit Form OCC-27 with supporting documentation does not constitute a reduction in certification level as set forth in (h) of this Section. If a reduction is warranted for this purpose, the licensing staff sends a letter, Form OCC-63, documenting the reduction in certification level to one star.

(A) **Licensing status.** The home must have a license, provisional license, or permit and must not have a history of numerous, repeated, or serious

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non-compliance with applicable licensing requirements. For the purposes of star certification the definitions of numerous, repeated, or serious non-compliance listed in (i) - through (iii) of this paragraph will apply.

(i) Numerous non-compliance is defined as any monitoring visit with five or more items documented as non-compliant on the monitoring report.

(ii) Repeated non-compliance is defined as three or more documented incidents of non-compliance with the same requirement within the last 12 months. However, for missing immunizations to be considered a repeat non-compliance, they must be regarding the same child.

(iii) Serious non-compliance is defined as non-compliance with licensing requirements which exposes children to conditions which present an imminent risk of harm. Some examples of serious non-compliance are violations of requirements for: staff-child ratio; supervision of children; prohibited disciplinary actions; licensed capacity; transportation of children without proper restraints; water activities, pools and other water hazards; multiple hazards; weapons; failure to report child abuse; allowing access to children by a person prohibited due to criminal record, health or behavior; unauthorized provision of medicine to children; room temperatures exceeding 85 degrees; and use of unguarded or unapproved heat sources.

(B) **Home provider training.** The family child care home provider must have documentation of 20 clock hours of Tier I, II, or III training per employment year ~~from the list of DHS approved training.~~ After being employed 12 months, any assistant caregiver required to meet the staff-child ratio must have documentation of 20 clock hours of Tier I, II, or III training per employment year ~~from the list of DHS approved training.~~ In-service training such as videos and home association training is counted for a maximum of six hours per year. Training must be within the last 12 months and can also be used to meet licensing training requirements.

(C) **Learning environment.** The family child care home provider reads to the children a minimum of 15 minutes each day.

(D) **Parent involvement.** The family child care home must provide the methods of parent communication contained in this subparagraph.

(i) Written policies are given to parents upon enrollment, and the provider has signed contracts with each family.

(ii) The provider encourages parents to visit any time their children are present, and provides access to all parts of the home used for child care.

(iii) The provider arranges for and documents, at least once per year, a conference with each child's parents. They discuss the child's current

interests, accomplishments, and challenges, and set goals together.

(iv) The provider makes opportunities available for parents to be involved in the program's activities.

(v) The provider has information available about community resources that provide services to parents and children and makes referrals to community and medical services as needed.

~~(E) **Home evaluation.** The home is assessed every two years by an independent evaluator using a DHS approved rating scale to determine the day to day quality of care provided to children. The initial assessment is scheduled within the first 12 months of the star certification.~~

(3) **Criteria for two star homes.** To be approved as a two star home the licensed provider must be accredited by the National Association of Family Child Care and not have numerous, repeated, or serious non-compliance with requirements or meet the criteria contained in this paragraph. The provider must:

~~(A) be accredited by an approved national accrediting body and not have numerous, repeated, or serious non-compliance with requirements; or~~

~~(B)~~ meet one star plus criteria, and meet Level III or higher on the Early Childhood Education Professional Development Ladder or one of the provider qualifications requirements listed in (i) - through (vii) of this subparagraph. In a facility licensed as a large family child care home, the licensed provider or full-time assistant must meet the qualifications. When the license is issued to two people, one full-time caregiver must meet the qualifications. The provider or large family child care home assistant must currently meet and maintain one of these qualifications:

(i) 120 hours of job-related Tier I, II, or III training ~~from the list of DHS approved training~~ within the last five years, five years of full-time experience in a licensed or legally exempt child care setting, and every two years a minimum score of 5.0 on the Family Day Care Rating Scale;

(ii) an occupational child care competency certificate for lead teacher through an Oklahoma technology center and three months of satisfactory full-time experience in a licensed or legally exempt child care setting;

(iii) a current Child Development Associate (CDA) or Certified Childcare Professional (CCP) credential;

(iv) a two year college ~~Certification~~ Certificate of Mastery;

(v) ~~60~~ 30 credit hours of Tier III training from an accredited college or university including 12 credit hours in early childhood education, child development, or ~~a closely an approved~~ related subject;

(vi) a four year degree ~~in elementary education or special education~~ with six college credit hours of Tier III training in early childhood education, child development, or ~~a closely an approved~~ related subject; or

(vii) a two or four year degree in early childhood education or child development.

(B) The licensed provider or full-time assistant has attended approved training on program evaluation and completed a self-assessment tool. Staff and parents are surveyed to identify strengths and weaknesses of the program and evaluate the program's effectiveness in meeting the needs of children and parents. Program goals are established and updated every two years. The program is assessed by an independent evaluator using a rating scale approved by OKDHS to determine the day to day quality of care provided to children. The initial assessment is scheduled upon approval of two star status and subsequently every two years.

(4) **Criteria for three star homes.** To be approved as a three star home, a home must meet all two star home criteria and be accredited through the National Association of Family Child Care. When an existing two star facility becomes accredited, the provider completes Form OCC-27 with proof of accreditation and documentation reflecting any changes in the previous two-star certification criteria.

(d) **Approval for certification for homes and centers.** The procedures contained in this subsection are followed for initial approval for certification, request for higher certification level, and second year of certification for one star plus facilities.

(1) The facility submits Form OCC-25 or Form OCC-27, and required documentation to the licensing staff.

(2) Within 30 days of receipt of the facility request, the licensing staff determines ~~if whether~~ the certification criteria have been met by reviewing the case record and the documentation submitted by the facility. The licensing staff conducts a monitoring visit if it has been more than four months since the last visit. The licensing supervisor reviews all information and consults with the licensing staff as needed prior to approval.

(A) The monitoring visits and substantiated complaints for the last 12 months of operation are reviewed to determine whether the facility meets the compliance criteria. The 12 month history includes the licensing record from the provider's previous licenses, if any. If, within the last 12 months, there are two or more incidents of numerous, repeated, or serious non-compliance as defined in (b)(2)(A) and (c)(2)(A) of this Section, the request may be denied.

(B) If the facility meets the criteria, the licensing staff updates the licensing database. The effective date is the first day of the next month, and the expiration date is one year later for one star plus facilities. The licensing representative sends a letter to the provider, Form OCC-35, Child Care Center - Star Certification Approval, or OCC-36, Family Child

Care Home - Star Certification Approval, confirming the approval and the effective date. If numerous, repeated, or serious non-compliance was identified during review of the case for the star certification, the letter includes a statement that these non-compliances will be considered if there are future non-compliances within a 12 month period and may result in reduction of the star certification.

(C) If the facility fails to meet the criteria, the licensing staff sends a letter to the provider, Form OCC-33, Family Child Care Home - Star Certification Disapproval, or OCC-34, Child Care Center - Star Certification Disapproval, identifying all the criteria that have not been met. The application is also reviewed by licensing staff to determine if another certification level can be met. If a one star plus facility is denied at 12 months or 24 months for failure to meet additional quality criteria the procedures in (h) of this Section are followed.

(D) The provider ~~can~~ may reapply at any time the criteria are met. However, if the request for a higher certification level is denied due to numerous, repeated, or serious non-compliance with licensing requirements, the provider ~~cannot be~~ is not approved for a higher certification level for six months after the date of the denial of the request. The six month waiting period may only be reduced by the regional programs manager upon evaluation of the facility's written documentation of corrective actions taken and licensing observation and documentation by licensing staff of substantial improvement in compliance.

(e) **Complaint investigations.** If a complaint is received or an investigation is pending while the initial request for star status is being considered, the investigation is completed as soon as possible. If the investigation is not completed within the 30 days, the licensing staff evaluates ~~if whether~~ the findings could impact the facility's record of compliance with licensing requirements.

(1) If the findings would not impact the facility's record of compliance and the facility meets all criteria, the request is approved.

(2) If the findings could impact the facility's record of compliance, the request is denied.

(A) If the complaint is later found uncertain or ruled out, the provider may resubmit the request for certification.

(B) If the criteria are met and the only reason the original request was denied was the incomplete complaint investigation, the request is approved and the effective date of certification is the first day of the month following the date the request was denied. If necessary, the facility ~~can~~ may file a supplemental claim.

(f) **Ongoing monitoring.** The procedures contained in this subsection are followed for ongoing monitoring.

(1) **Written notice.** The facility notifies the licensing staff in writing within five working days of any changes in the information provided on Forms OCC-25 or OCC-27.

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Providers may ~~choose to~~ use Forms OCC-26, Periodic Star Certification Review - Center, or OCC-28, Periodic Star Certification Review - Home, to submit this information.

(2) **Periodic monitoring visits.** During a minimum of three periodic monitoring visits annually, the licensing staff completes Form OCC-26 or OCC-28 and verifies that certification documentation is still current and accurate and that the facility has not developed a history of numerous, repeated, or serious non-compliance with licensing requirements. Once the provider has been notified in writing that numerous, repeated, or serious non-compliance exists, any subsequent numerous, repeated, or serious non-compliance within a 12-month period is considered a history. Once the provider has developed a history of numerous, repeated, or serious non-compliance, certification may be reduced using ~~the procedure in subsection (h) of this Section.~~

(3) **Violations.** If violations of certification criteria are documented, or if the facility notifies the Division of Child Care, Licensing Services (Licensing) in writing of any changes in the information provided on Forms OCC-25 or OCC-27, the facility submits a plan for correcting the violations within an agreed-upon time frame, not to exceed 90 days from the date the violation occurred or the date a facility is notified of a substantiated complaint. Licensing staff provides written notification to the operator documenting the violations and a statement that the certification level will be reduced if violations are not corrected within the agreed-upon time frame. The notification also states that future violations of this or other certification criteria may result in the reduction of certification level.

(g) **Extension of time to comply.** When a center or home fails to maintain the criteria for ~~their~~ the certification level, the licensing staff advises the provider of the right to request an extension of time to comply. The provider submits the request to the Director of Child Care Services or designee prior to the expiration of the one star plus certification or the agreed-upon time frame for the correction of the violations. One or more discretionary extensions of time to comply of one to six months may be granted. The applicant must demonstrate that the violation of the criteria was not foreseeable and was beyond the applicant's control.

(h) **Reduction in certification level.** The procedures in this subsection are followed under the following circumstances, when: ~~if~~ a one star plus facility fails to meet the additional criteria at 12 or 24 months; ~~if~~ violations are not corrected within the agreed-upon time frame; ~~if~~ the facility has developed a history of numerous, repeated, or serious non-compliance with licensing requirements; ~~if~~ the Oklahoma Department of Human Services (OKDHS) has issued an Emergency Order; ~~if~~ a notice of proposed denial or revocation of license has been issued; or ~~if~~ an injunction is obtained.

(1) Appropriate supervisory approvals are obtained before any action is taken. The licensing staff reviews the case with the supervisor and regional programs manager. If the criteria not met includes numerous, repeated, or serious non-compliance, the regional programs manager notifies the licensing coordinator's office.

(2) If a reduction is warranted and supervisory approval has been obtained, the licensing staff sends a certified letter, Form OCC-62, Star Certification Reduction, to the provider documenting the reduction in certification level. Certification is reduced to the level at which the provider meets criteria. In the letter, the provider is informed of the right to request an administrative review of the decision. The certified mail delivery receipt card is addressed to return to the Director of Child Care Services. In order to receive an administrative review, the provider must submit a request in writing to the Director of Child Care Services within 15 calendar days of receipt of the ~~Department's~~ OKDHS letter notifying the provider of the reduction. The request must include written documentation stating the provider's grounds for appeal.

(3) ~~The Licensing~~ licensing staff enters the recommended reduction on the database and the supervisor approves the action. State Office licensing staff update any changes in the star status level and star payment rate following verification of the provider's receipt of the certified letter and the administrative review, if requested.

(4) If an administrative review is requested and ~~the Agency~~ OKDHS is upheld or no administrative review is requested, the licensing staff obtains the star certificate and decal from the provider on the next monitoring visit.

(5) The procedures in (A) through (C) of this ~~subsection~~ paragraph are followed when an administrative review is requested.

(A) Within 30 days of receipt of the request for an administrative review, a letter is sent notifying the provider of the date of the administrative review. The letter is sent to the provider's last known address. The provider is given at least two weeks written notice prior to the administrative review. Any supporting documentation which ~~the Agency~~ OKDHS intends to use as evidence at the review to support its decision is included with the letter.

(B) The review is conducted by a panel of agency OKDHS staff who have not been involved in the decision to reduce. The provider may submit written documentation and is given an opportunity to appear at the administrative review. The standard of review applied by the panel is whether ~~or not~~ the agency decision of OKDHS to reduce is substantially supported by the evidence. The burden of proof ~~to be~~ applied is the greater weight of the evidence.

(C) When possible, the reviewing panel ~~will make~~ makes a determination to either affirm or reverse the Agency OKDHS decision on the date of the administrative review and ~~announce~~ their announces the decision at the conclusion of the review. Time constraints or the complexity of issues may require the panel to take a matter under advisement. Written findings are ~~to be~~ completed within ten calendar days from the date of the review.

(6) If there is evidence of extenuating or revised circumstances, the provider may propose alternative settlement options prior to the date of the review hearing by

contacting the ~~Statewide Licensing Coordinator~~ statewide licensing coordinator or designee.

(7) The provider ~~can~~ may reapply for a higher certification level at any time the criteria are met. However, if the certification level is reduced due to numerous, repeated, or serious non-compliance with licensing requirements, the provider ~~cannot be~~ is not approved for a higher certification level for six months after the receipt of the certified reduction letter.

(i) **Change in ownership.** If the ownership of a star facility changes and the new owner desires to retain the star status, the new owner applies by submitting a new Form OCC-25 and the required documentation to verify that the certification criteria ~~is continuing~~ continues to be met. The effective date of the new certification can be the six month permit date if approved within 30 days of the permit date.

(j) **Change in location.** If the location of a facility changes, the licensing staff verifies compliance with the criteria at the new location.

(k) **Record-keeping.** Periodic review forms, certification request forms, and supporting documentation are maintained in the licensing file or in a separate file that is part of the open record, with the exception of documents that are maintained in a confidential manner, including:

- (1) page 5, Staff Salary Report, of Form OCC-25 and supporting documentation;
- (2) the completed rating scale, ~~as well as; and~~
- (3) photos including that include children, ~~which are maintained in a confidential manner.~~

**340:110-1-9. Case management**

(a) **Periodic monitoring visits.** The licensing staff makes a minimum of three unannounced monitoring visits to facilities that operate a full-year program and two unannounced monitoring visits annually to facilities that operate less than a full year. If caseloads prevent staff from fulfilling this task, supervisors consult with them on case management, and the number of required visits may be reduced. This adjustment is approved and documented in the case record by the supervisor. Licensing staff varies the time of monitoring visits to include lunch observation and an evening visit to child care centers with extended hours. Weekend monitoring visits are ~~necessary~~ required only when there has been a complaint specific to weekend care.

(b) **Ongoing monitoring.** During each monitoring visit, the licensing staff observes the entire facility, including outdoor play space and vehicles used for transportation, if available. The following ~~should be~~ are checked at or subsequent to each visit:

- (1) compliance with licensing regulations;
- (2) records for new staff;
- (3) staff training records;
- (4) DHS Oklahoma Department of Human Services (OKDHS) computer checks on applicable persons; and
- (5) fire and health inspections within the last 24 months, if applicable.

(c) **Technical assistance and consultation.** Licensing staff provides:

- (1) technical assistance to licensees to assist them in meeting minimum requirements;
- (2) consultation on various aspects of quality child care; and
- (3) consultation to persons interested in becoming licensed and, upon request, to in-home caregivers.

(d) **In-home caregivers.** The day care assistance worker notifies the licensing staff on Form K-13, Information/Referral - Social Services, of the approval of a child care plan involving an in-home caregiver. In-home care is provided by a person in the child's own home.

(1) Within 30 calendar days of receipt of Form K-13, the licensing staff mails a packet of information to the caregiver. The packet includes information on child growth and development, health and safety issues, training opportunities, and other resources.

(2) Completion of six clock hours of training by the caregiver within 90 days of his or her approval is verified by the day care assistance worker.

(e) **Agreements with tribal licensing programs and other monitoring agencies.** ~~The Department~~ OKDHS may enter into a cooperative licensing agreement with a tribal licensing program or other monitoring agency.

(f) **Equipment inventory.** Licensing staff completes the appropriate Equipment Inventory prior to a license being issued, prior to a change in facility class, and prior to an increase in licensed capacity in a child care center, part-day children's program, and school-age program. The purpose of the inventory is to document the equipment available and items needed to comply with the equipment requirements. The licensing staff may conduct a complete inventory any time concern exists about the availability of required equipment.

(g) **Change of address.** When a facility moves to a new address, the procedures contained in this subsection are followed.

(1) **Family child care home.** If a family child care home provider moves to another location within the licensing staff's area, the licensing staff conducts a monitoring visit and completes a monitoring report. If a family child care home provider moves outside of the licensing staff's area, the case is transferred to the appropriate licensing staff who conducts the monitoring visit.

(2) **Child care centers, part-day children's programs, and school-age programs.** If a child care center, part-day children's program, or school-age program moves, the case is closed and a new application is obtained. A license may be issued promptly if the facility meets licensing requirements and the only change to the facility is the location.

(h) **Change in name.** If the licensing staff verifies there is a change in name but no change in ownership, the change is documented in the case record and the computer is updated.

(i) **Change in household.** If there is a new spouse or other head of household in a family child care home or large child care home, a new application, Form OCC-42, and criminal background check are required and ~~DHS~~ OKDHS computer checks are completed. Other changes in household members are documented on the monitoring report and criminal background checks are completed if necessary.

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(j) **Change in ownership.** When there is a change in ownership or change in form of business organization of a child care center, part-day program, or school-age program, the case is closed and a new application obtained.

(jk) **Change in facility class.** A new application is required when a family child care home converts to a child care center, part-day program, or school-age program, or when a child care center, part-day program, or school-age program converts to a family child care home. Any other request for change in class requires the following:

- (1) a request in writing from the provider;
- (2) documentation that the facility meets the requirements for the requested class type ~~it is converting to~~;
- (3) an equipment inventory, if applicable;
- (4) a current approved fire inspection, if applicable;
- (5) a current approved health inspection, if applicable; and
- (6) computer updates to the appropriate class and monitoring frequency plan.

(kl) **Procedure for increasing or decreasing capacity.** ~~The procedure for increasing or decreasing the capacity of a facility is provided in the Instructions to Staff of this subsection. When a facility requests an increase or decrease in licensed capacity it is documented on Form OCC-3, Child Care Center Monitoring Report, page 4, and must be approved by the licensing supervisor. If the request to increase capacity is due to additional physical space, the facility must not have a history of numerous, repeated, or serious non-compliance, and must provide:~~

- (1) ~~the reason for the increase;~~
- (2) ~~an updated floor plan on Form OCC-57, Physical Plant, that reflects adequate indoor and outdoor space, toilets, and sinks for the increase and any changes;~~
- (3) ~~fire department approval of any space not previously inspected;~~
- (4) ~~health department approval of any space not previously inspected; and~~
- (5) ~~updated equipment inventory that reflects adequate equipment for the increase.~~

(lm) **Inactive cases.** If children have not been in care on a regular basis during the previous year, the option of voluntary closure is discussed with the provider.

(1) A provider who wants his or her case to remain open ~~submits a request in writing including a statement that the provider will notify Division of Child Care, Licensing, when care is resumed.~~

(2) ~~The provider must be~~ is contacted periodically by licensing staff by telephone or letter periodically to update the provider's status, and visited at least once a year to verify and document compliance with licensing requirements. ~~Licensing staff confirms the inactive status in writing and that it is the provider's responsibility to notify licensing when care is resumed.~~

(mn) **Response to a sudden infant death syndrome (SIDS) death.** When notified of a death assumed to be SIDS, the licensing staff visits the facility as soon as possible, unless advised otherwise by law enforcement.

(no) **Serious incident reports.** The licensing supervisor submits to the licensing regional ~~program~~ programs manager, county director, and statewide licensing coordinator a report of any serious incident.

## 340:110-1-9.1. Certification of child care facilities to receive increased reimbursement rate for the care of children with disabilities

(a) **Purpose.** Certification is the process through which a licensing staff documents that a child care facility meets certification requirements for a child with disabilities.

- (1) Certification is required for a provider to receive the child care rate for a child with disabilities.
- (2) To qualify for the higher rate the:
  - (A) facility must be licensed, have a provider contract, and be certified to care for the child;
  - (B) child's family must be eligible for ~~DHS~~ Oklahoma Department of Human Services (OKDHS) subsidized child care services; and
  - (C) child must be receiving benefits from at least one of the following sources:
    - (i) Social Security Income (SSI) benefits;
    - (ii) SoonerStart, early intervention program for children birth to age ~~3~~ three; or
    - (iii) Special Education Services, public school program for children ages ~~3~~ three and older.

(b) **Initial approval for certification.** For initial approval for certification the procedures contained in this subsection are followed.

- (1) Upon receipt of Form ADM-123, Referral and Certification for Special Needs Child Care Rate, the licensing staff visits the child care facility within ~~40~~ ten working days. If the facility is currently certified to care for at least three children with disabilities and has consistently met certification requirements, the licensing staff may approve certification for a new child without making a monitoring visit. However, a visit is made within three months. Although observation of the child in care is preferable, certification may be approved if the child has not yet enrolled or is absent during the visit.
- (2) If a child who qualifies for the higher rate and is living in Oklahoma is approved for care in another state, the facility may be certified if:

(A) the facility provides documentation of ~~required training and consultation~~ monitoring visits for the last year to demonstrate compliance with the applicable child care requirements; and

(B) ~~licensing staff from the other state are willing to verify the facility's status, compliance history and ability to meet the individual needs of the child upon receipt of Form ADM-123, an announced visit is made by Oklahoma licensing staff within 30 working days to verify compliance with certification criteria; and~~

(C) ~~to verify that certification requirements are met, three times per the Oklahoma licensing staff:~~

- (i) ~~completes by phone Form OCC-8, Periodic Monitoring Report; and~~

- (ii) obtains a copy of the most recent monitoring report from the other state.
- (3) Approval for certification is based upon verification that:
  - (A) the facility director or family child care home provider has completed Section III of Form ADM-123, agreeing to meet the individual needs of the child;
  - (B) the facility has a previous record of compliance with minimum licensing requirements. Although full compliance with licensing requirements is not ~~necessary~~ required, if the facility has had numerous, repeated, or serious non-compliance with licensing requirements that ~~could~~ adversely impact the care of a child with disabilities, such as staff-child ratios, health practices, or hazards, ~~the non-compliance would prevent the facility from becoming~~ is not certified. A facility on a six-month permit may be certified if currently in compliance with licensing requirements;
  - (C) facility staff currently trained in first aid and cardiopulmonary resuscitation (CPR), including infant and child, are present at all times when the child with disabilities is in care. The licensing staff checks training documentation to obtain the effective dates of training. Only training that is ~~DHS~~ approved by the Oklahoma Department of Human Services (OKDHS), such as Red Cross, American Heart Association, or First Care, is accepted. The licensing staff recommends that more than one caregiver be trained to ensure that trained staff ~~will~~ is always ~~be~~ present when the child is in care;
  - (D) the facility staff who work with the child have received on-site consultation regarding the nature of the child's disability and the development of a child care plan, to include staffing, equipment, and specialized training needs. The consultant provides resource materials to the facility for future reference. For a child designated as "severe," consultation ~~shall be~~ is obtained at least annually; and
  - (E) within six months of certification, appropriate staff obtain six hours of training in areas that address the care of children with disabilities. The center director and at least one person who works directly with the child must receive training. However, it is preferable that all staff who work with the child ~~be~~ are trained. As staff changes occur, a new director or new staff who work directly with the child must obtain training within six months of that assignment. First aid, CPR, or informal training ~~may~~ is not ~~be~~ counted to meet the special training requirement. Recommended training includes Special Care's Unique Environments, Child Care Careers' Helping Children with Special Needs, SoonerStart training, formal training from the ~~DHS~~ OKDHS approved sponsor training list or specialized workshops or conferences addressing the care of children with special needs.

- (4) Upon completion of Section IV of Form ADM-123, the licensing staff sends the original to the appropriate county staff responsible for child care assistance. Copies of Form ADM-123 and the monitoring report are sent to the licensing supervisor, and copies are maintained in the facility's file.
- (5) If the licensing staff documents that certification requirements have not been met, the documentation is reviewed and the denial approved by the licensing supervisor. The provider is informed in writing within 30 days of the initial receipt of ~~the~~ Form ADM-123 of what is needed for certification and the right to request an administrative review.
- (6) A request for an administrative review must be submitted in writing to the statewide licensing coordinator or designee within ten calendar days of notification. An administrative review is conducted within ten calendar days of receipt of the request.
- (7) The administrative review committee consists of the statewide licensing coordinator or designee and two staff from the Division of Child Care.
- (8) The facility and Family Support Services Division (FSSD) are notified in writing of the decision by the statewide licensing coordinator.
- (c) **Ongoing monitoring.** The procedure for ongoing monitoring contained in this subsection is followed.
  - (1) **Periodic monitoring visits.** During periodic monitoring visits, the licensing staff completes Form OCC-8, Periodic Monitoring Report, and verifies that certification requirements are ~~being~~ met, including:
    - (A) the enrollment status of the child;
    - (B) staff present with first aid and CPR training;
    - (C) annual on-site consultation for a child designated ~~as~~ severe;
    - (D) director and staff training relative to care of children with disabilities; and
    - (E) observations that indicate that the program is meeting the individual needs of the child as recorded on Form ADM-123.
  - (2) **Violations.** All violations observed are documented on page 4 of the monitoring report, and a plan of correction is developed with agreed-upon time frames for correction of violations. If there are serious or ongoing violations of certification requirements, a letter is sent to the operator documenting the violations and plan of correction, and a copy is sent to the parent(s) of the child with special needs who is affected by the violation(s).
- (d) **Withdrawal of certification.** Certification ~~will continue~~ continues unless there is documentation of serious or ongoing violations of certification requirements. Violations of certification requirements are different from non-compliance with licensing requirements, although they may involve the same issue, for example, understaffing. If violations are not corrected and represent a potential risk to the child, such as serious understaffing in the child's room or staff without first aid training, the procedure in this ~~paragraph~~ subsection is followed.

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- (1) The licensing staff reviews the case with his or her supervisor.
- (2) An office conference is held with the provider at which time he or she is notified that certification is being withdrawn and the provider has the right to request an administrative review of the decision.
- (3) A letter is sent to the provider documenting withdrawal of certification and the right to request an administrative review of the decision. If the provider did not attend the office conference, the letter is sent by certified mail. A copy of the letter is sent to the appropriate county office staff responsible for child care assistance who is responsible for notifying the parent and provider of the rate change and its effective date.
- (4) A request for an administrative review must be submitted in writing by the facility to the statewide licensing coordinator or designee within seven calendar days of receipt of the letter. An administrative review is conducted within ten calendar days of receipt of the request.
- (5) The administrative review committee consists of the statewide licensing coordinator or designee and two staff from the Division of Child Care.
- (6) The facility and ~~Family Support Services FSSD~~ are notified in writing of the decision by the statewide licensing coordinator.
- (7) A provider may reapply for certification when compliance with certification requirements has been reestablished.

### 340:110-1-9.3. Non-compliance with requirements

- (a) **Documentation of non-compliance.** The Division of Child Care licensing staff documents areas of non-compliance as well as the discussion with the operator clearly and concisely on the monitoring report.
  - (1) A plan of correction, including an agreed-upon time period for correction of the non-compliance, is documented for each non-compliance on the monitoring report. The plan of correction includes, if applicable, how compliance will be maintained on an ongoing basis.
  - (2) Immediate correction is required when the non-compliance has a direct impact on the health, safety, or well-being of one or more children in care.
  - (3) The licensing staff requests that the operator sign the monitoring report, and explaining explains that the operator's signature indicates acknowledgment of information recorded.
  - (4) If the person in charge refuses to sign, the refusal is documented on the report.
  - (5) The operator is given a copy of the completed monitoring report.
- (b) **Referrals to fire and health officials.** If non-compliance regarding fire or health requirements places children at risk or remains uncorrected, the licensing staff requests an inspection by a fire, health, or Department of Environmental Quality (DEQ) official. If there is non-compliance regarding smoke detectors, the child care provider is given a copy of the Smoke Detector Law, Section 324.11A of Title 74 of the Oklahoma Statutes. If the non-compliance is not corrected

by the third monitoring visit or is frequently repeated, copies of the monitoring reports are sent with a cover letter to the appropriate fire official for enforcement of the law.

(c) **Case management responses to non-compliant facilities.** ~~The following additional responses may be used when~~ When there is repeated, numerous, or serious non-compliance, one or more of the actions in (1) through (11) is taken.

- (1) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, if necessary, to assist the operator in meeting and maintaining licensing requirements.
- (2) **Follow-up phone call.** ~~Phone~~ Follow-up phone calls are made, and documented on page 4 of the Monitoring Report, Form OCC-3, and a. A copy of the documentation is mailed to the facility.
- (3) **Non-compliance letters.** A non-compliance letter may be written to the operator. The licensing staff ~~also~~ sends a copy of the monitoring report and non-compliance letter to the governing board or owner, if applicable.
- (4) **Return monitoring visit.** A return monitoring visit may be made if there is repeated, numerous, or serious non-compliance with licensing requirements or when non-compliance places children at imminent risk of harm. If the non-compliance is associated with a specific time of day, such as understaffing after school or a lack of early morning supervision, the return visit is made at that approximate time.
- (5) **Use of witnesses.** The licensing staff may be accompanied by a witness during monitoring visits if the facility has had numerous, repeated, or serious non-compliances or if denial or revocation of the license is ~~being considered~~ under consideration. The witness may be a ~~an~~ Oklahoma Department of Human Services (OKDHS) employee or a representative from the health or fire department. The witness signs the monitoring report in the space provided.
- (6) **Increased monitoring visits.** Licensing staff may increase the frequency of monitoring when there has been repeated, numerous, or serious non-compliance or when the need for additional technical assistance is indicated.
- (7) **Notice to comply.** The licensing staff provides the facility with Form OCC-37, Notice to Comply, on which the facility documents the plan of correction. Immediate correction may be required if the non-compliance places the health, safety, or well-being of one or more children in care at risk. If the plan submitted by the operator is unacceptable to the licensing staff, the staff negotiates and documents a revised plan. If the Notice to Comply is not submitted within the specified time period, the licensing staff contacts the operator and documents the conversation. If concerns exist or the operator is uncooperative, the licensing staff sends a letter stating that failure to complete a Notice to Comply may result in revocation of license, denial of the application, or the filing of an injunction or emergency order.
- (8) **Office conference.** The licensing staff may schedule an office conference with the operator of the facility. The supervisor is present at the office conference. The

licensing regional ~~program programs~~ manager is informed of the office conference and may be present, if necessary. Areas of non-compliance and progress toward meeting the plan(s) of correction are reviewed and technical assistance is offered. The conference is documented on page 4 of the Monitoring Report, Form OCC-3, which is signed by the licensing staff, the operator, and any witnesses present. A Notice to Comply is completed if one addressing these issues has not been completed recently.

(9) **Consent agreement.** ~~The Department OKDHS~~ and the operator of the facility may enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial or revocation. Refer to OAC 340:110-1-9.5.

(10) **Revocation.** The licensing staff recommends that the license be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children. Refer to OAC 340:110-1-10.

(11) **Voluntary closure.** The operator is asked to voluntarily close the facility.

(d) **Case management responses when children are at risk.** If the licensing staff documents non-compliance with requirements or is investigating a complaint that may place the health, safety, or well-being of children at imminent risk of harm, options to consider during consultation with the operator and the licensing supervisor are outlined in this subsection. If any of options (2) - through (7) are utilized, the local resource and referral agency is notified.

(1) The operator is asked to immediately correct the non-compliance, for example, the staff person will not work at the facility pending the outcome of an investigation.

(2) The operator is asked to discontinue child care until the non-compliance is corrected or the investigation is complete.

(3) The operator is asked to voluntarily close the facility.

(4) The licensing staff requests an emergency order when immediate action is needed to protect children in a child care facility that is on permit, licensed, on notice of revocation or denial, or operating during an appeal following revocation or denial. Refer to OAC 340:110-1-9.4.

(5) The operator agrees to enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial, revocation, or refusal to renew. Refer to OAC 340:110-1-9.5.

(6) The licensing staff recommends that the license be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children. Refer to OAC 340:110-1-10.

(7) An injunction may be requested when a child care facility is:

- (A) unlicensed;
- (B) on application status;
- (C) licensed;
- (D) violating an emergency order;

(E) operating during an appeal following revocation or denial and children are at risk; or

(F) violating the notice to cease care following revocation or denial of license.

(e) Notification to supervisor when children are at risk. If during a monitoring visit the licensing staff is concerned that the health, safety, or well-being of children is at imminent risk, the licensing supervisor or state office staff is contacted immediately for an appropriate response.

(ef) Alternative method of compliance. The Division of Child Care (DCC) may approve an alternative method of compliance to a minimum licensing requirement. An alternative method of compliance may be authorized if DCC determines that the alternative method of compliance offers equal protection of health, safety, and welfare to children, meets the basic intent of the requirements for which the alternative compliance was requested, and does not violate statutory requirements. An applicant or licensee may submit a written request on Form OCC-61, Alternative Compliance Request, for authorization to the statewide licensing coordinator or designee. A separate request is submitted for each requirement for which an alternative method of compliance is requested. Approval of an alternative method of compliance shall not set a precedent, and ~~will be is~~ independently evaluated on the merits of each request. The facility's record of compliance ~~will be is~~ taken into consideration in determining whether to approve the request. An alternative method of compliance ~~will not be is not~~ authorized for critical items affecting the health and safety of a child, such as exceeding licensed capacity or staff-child ratios, fire safety violations, or behavior and guidance violations. Written notice from ~~the Oklahoma Department of Human Services OKDHS~~, Form OCC-61-A, Alternative Compliance Notice, stating which states the nature of the exception, is posted with the license.

**340:110-1-9.4. Emergency order**

(a) **Process to obtain emergency order.** An emergency order may be issued by the Oklahoma Department of Human Services (OKDHS) when immediate action is needed to protect the health, safety, or well-being of children in a licensed child care facility.

(1) If the operator is unwilling to voluntarily correct the hazardous situation, the licensing staff notifies the licensing supervisor and licensing regional ~~program programs~~ manager ~~of the circumstances~~. If the supervisor agrees that an emergency order is warranted, all supporting documentation is sent by the quickest means available to the statewide licensing coordinator.

(2) If in agreement, a written order is issued and signed by the statewide licensing coordinator. The order:

- (A) states the existence of an emergency;
- (B) sets forth remedies, such as; removal of children from the facility or closure of the facility; and
- (C) includes the right to appeal the decision.

(3) The order is effective immediately.

(4) The order remains in effect until rescinded or the facility license is denied or revoked.

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(b) **Removal of children.** If children are at imminent risk of serious harm and immediate removal from the child care facility is indicated, the statewide licensing coordinator or designee gives verbal approval for removal of children. Two options available are:

- (1) the operator and parents are told that the child care facility will not reopen on the following day; or
- (2) parents are contacted and advised to pick up their children immediately. If every effort has been made to reach the parents and children are at imminent risk, the licensing staff contacts the police and requests that the children be taken into protective custody.

(c) **Rescinding the order.** The emergency order may be rescinded when the licensing staff verifies correction of the hazardous situation. Upon receipt of such documentation, the statewide licensing coordinator or designee notifies the operator in writing that the order has been rescinded.

(d) **Hearing process.** The operator may request a hearing by filing a written request within ten days of receipt of the emergency order. The hearing is conducted within ten days from receipt of the operator's request. ~~A Department An~~ OKDHS hearing officer conducts the hearing.

(e) **Appeal rights.** If the results of the ~~Department~~ OKDHS hearing are disputed, the operator may file an appeal in district court within 30 days of the decision.

(f) **Injunction.** If an operator violates the conditions set forth in the emergency order, an injunction from district court is requested by the licensing supervisor after consultation with the statewide licensing coordinator or designee.

### 340:110-1-9.5. Consent agreement

(a) **Purpose.** The Oklahoma Department of Human Services (OKDHS) may offer to enter into a consent agreement with a facility in lieu of license denial or revocation. If such action has already taken place, a consent agreement may be used during the ~~appeals~~ appeal process if the facility comes into compliance with licensing requirements. The use of a consent agreement is not required prior to denying or revoking a license.

(b) **Process.** When the documented evidence reflects that the facility operator is unable or unwilling to comply with minimum requirements, the licensing staff discusses the use and terms of a consent agreement with the licensing supervisor. If the licensing regional ~~program~~ programs manager and the statewide licensing coordinator or designee concur with this action, a meeting is scheduled with the operator.

- (1) The operator is asked to bring the names and addresses of all children currently enrolled at the facility.
- (2) During the meeting, areas of non-compliance and the terms of the agreement are discussed. The meeting is documented on Form OCC-3, Child Care Center Monitoring Report, page 4, and is signed by the operator, licensing staff, and any witness present. A copy is provided to the operator.
- (3) An agreement is written by the statewide licensing coordinator or designee. Terms and time frames of the agreement are based upon the nature and severity of the non-compliance. The agreement may include emergency

voluntary restrictions such as a ban on future admissions of children to the facility, a restriction on the ages of children cared for in the facility, a reduction in the number of children attending the facility or the number of hours the facility can operate each day, specific staff training, drug testing, and medical or psychological evaluation. Time frames to initiate and conclude the terms of the agreement are established and may be extended upon approval of the statewide licensing coordinator or designee and the OKDHS Legal Division.

(4) The operator is advised to prominently post a copy of the consent agreement in the child care facility. During the next monitoring visit, the licensing staff verifies that the consent agreement is posted. If it is not posted, the licensing staff documents it as a violation of the terms of the consent agreement.

(5) The licensing staff mails a copy of the consent agreement, with a cover letter to parents of children currently enrolled at the facility. Upon enrollment of new children, the facility must provide those names and addresses to licensing staff. Licensing staff mails a copy of the consent agreement and cover letter upon receipt of this information. If the operator has not provided children's names and addresses, the licensing staff records the information from the children's records during the next monitoring visit.

(c) **Violations of the terms of the consent agreement.** Any violation of the terms of the consent agreement is considered ~~to be~~ grounds for proceeding with license denial, revocation, or refusal to renew.

(d) **Appeals.** The child care facility is not entitled to an appeal of the terms of the consent agreement, as participation in the agreement is voluntary.

### 340:110-1-10. Revocation or denial of license

(a) **Failure to meet requirements.** When repeated, numerous, or serious non-compliance with licensing requirements is observed and documented or the facility ~~has failed~~ fails to adequately protect the health and safety of children, the Oklahoma Department of Human Services (OKDHS) may deny the application for license, or revoke the license, ~~or refuse to renew the license.~~

(1) **Denial of application for license.** If a facility has filed an application for an initial license, ~~the Department~~ OKDHS may deny the application.

(2) **Revocation of license.** If a license or provisional license is currently in effect, the licensing staff may recommend that the license be revoked.

(b) **Licensing staff recommendation.** The licensing staff consults with the licensing supervisor regarding his or her recommendation for revocation or denial. If the licensing supervisor concurs with the recommendation, the decision is discussed with the licensing regional ~~program~~ programs manager and the statewide licensing coordinator. If they concur with the decision, the licensing staff prepares a detailed summary of monitoring visits, complaints, correspondence, and any other relevant documents. The licensing staff submits the complete case record and the summary, including

the recommendation, to the licensing supervisor and notifies the facility in writing that the case has been referred to the statewide licensing coordinator.

(c) **Approval of recommendation and notification.** The case record and summary are reviewed by the statewide licensing coordinator or designee. The licensing staff's recommendation of revocation or denial is either approved, disapproved, or the decision delayed pending further investigation.

(1) When the recommendation is approved by the statewide licensing coordinator, it is submitted to the OKDHS Legal Division for review of the legal adequacy of the notice of pending action that is to be mailed to the operator. The Director of Child Care Services or designee has final approval of the revocation or denial.

(2) The statewide licensing coordinator sends a written notice of the pending action to the operator by certified mail at least 30 days prior to the effective date of the action. The notice includes:

- (A) a copy of the summary;
- (B) a statement regarding the operator's right to appeal the decision;
- (C) a statement that the law requires written notification to parents of the action taken, and instruction to the operator to submit the names and addresses of currently enrolled children; and
- (D) a sign providing notice of proposed revocation or denial that is required to be prominently posted in the facility.

(3) During the next monitoring visit, the licensing staff and a witness verify that the sign providing notice of proposed revocation or denial is posted. If the sign is not posted, the licensing staff sends a letter to the operator documenting the violation of the legal notice.

(4) If the operator does not provide children's names and addresses, the licensing staff records the information from the children's records during the next monitoring visit.

(5) Questions from the operator regarding the action and appeal process are referred to the statewide licensing coordinator or designee.

(6) If the operator does not appeal the decision within the designated time period, the statewide licensing coordinator sends a letter to the operator giving notice of the denial or revocation and stating the effective date. The closure date is entered into the computer by the statewide licensing coordinator or designee. A copy of the correspondence is sent to the licensing staff.

(7) The licensing staff conducts a follow-up visit to confirm that child care has been discontinued. The statewide licensing coordinator or designee is notified of the visit.

(8) If the operator continues to maintain and operate the facility for child care after a final decision revoking or denying licensure, the statewide licensing coordinator may request that the Attorney General or the appropriate district attorney secure a civil injunction or initiate criminal proceedings.

(d) **Appeal process.** The appeal process regarding denial of application or revocation of license is described in this subsection.

(1) ~~Appeals must be~~ The appeal is submitted to the Oklahoma Commission on Human Services by the operator within 30 days of receipt of the notice.

(2) If the operator appeals, a hearing is scheduled by the ~~DHS~~ OKDHS Appeals Unit.

(3) The facility may continue to operate during any ~~appeals~~ appeal process unless an emergency order is in effect. The licensing staff conducts monitoring visits at least once a month, unless advised otherwise in writing by the statewide licensing coordinator or designee, and is accompanied by the same witness whenever possible. If at any time during the ~~appeals~~ appeal process ~~the Department~~ OKDHS believes that the health, safety, or welfare of children cannot be assured:

- (A) an emergency order is requested; or
- (B) following consultation with the statewide licensing coordinator or designee, the licensing supervisor contacts the district attorney and requests that an injunction be filed.

(4) If the ~~Department's~~ OKDHS decision of OKDHS to revoke or deny a license is upheld during all appeals, the statewide licensing coordinator sends a letter to the operator that child care must immediately cease. The licensing staff conducts a follow-up visit to confirm that child care has been discontinued. If the operator continues to operate the child care facility, the licensing field staff, in consultation with the statewide licensing coordinator or designee, may request that the local district attorney pursue an injunction or initiate criminal proceedings, or the statewide licensing coordinator may pursue legal action through the Attorney General.

(5) If the ~~Department's~~ OKDHS decision of OKDHS to revoke or deny a license is not upheld, ~~the Department~~ OKDHS ~~shall take~~ takes action to implement the decision within ten days.

(6) When ~~the Department~~ OKDHS denies or revokes a facility's license, the responsible agent may not make application for a new child care facility license within the state:

- (A) following notification of the agent of the proposed denial or revocation;
- (B) during an appeal process; and
- (C) for five years following the effective date of closure.

(e) **Change in ownership during appeal process.** If there is a change in ownership during the appeal process, the operator must provide documentation verifying the change.

**340:110-1-20. Professional Development development of Division Staff DCC staff**

(a) **Licensing staff training.** Division of Child Care (DCC) Licensing staff are required to receive job-related training on an annual basis. This includes the new worker licensing training required for all new licensing staff. An annual training plan is developed for each employee with the employee's supervisor.

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(b) Professional development of ~~Division~~ DCC staff. The ~~Division of Child Care~~ DCC awards scholarships for coursework leading to a master's degree in early childhood education at a university with which ~~the Division~~ DCC has a cooperative agreement. The program can be discontinued at any time based on unavailability of funding through the Child Care Development Fund. Scholarships are awarded to employees based upon supervisory recommendation and selection by the ~~Division of Child Care~~ DCC Education Assistance Committee. Preference is given to staff having who have three years of Oklahoma Department of Human Services (OKDHS) employment. Participation is limited to two courses per semester per person.

(1) **Mandatory service requirement.** The mandatory service requirement is six months of service to ~~the Division of Child Care~~ DCC for each 0 - 12 credit hours of scholarship support. The obligation period begins after completion of the program or upon withdrawal from the program. Failure to complete the educational requirements or the obligated service period requires repayment of tuition, books, and fees.

(2) **Reimbursement requirement.** At the end of each semester, scholarship recipients submit a copy of their grades to their supervisor and to the ~~Division of Child Care~~ DCC Education Assistance Committee. Exceptions to the reimbursement requirement may be granted for serious illness, injury, or a personal situation requiring the recipient to withdraw from school. Reimbursement to ~~the Department~~ OKDHS for the cost of tuition, books, and fees, and other expenses incurred is required when and a recipient is not permitted to enroll in further courses until the debt is paid in full when a recipient:

- (A) withdraws from a class;
- (B) earns a grade below a "C" in any class;
- (~~B~~C) receives a grade of "incomplete" that is not converted to an acceptable grade during the next semester; or;
- (~~E~~D) is removed from the program by the university.

(3) **Use of Leave leave.** With supervisory approval, scholarship recipients may use educational leave up to 80 hours per semester. Such requests are submitted and approved in accordance with DHS:2-1-42. Attendance at night or weekend classes does not qualify the recipient for compensatory time.

(4) **Application.** Applications and supporting documentation for the scholarship program are submitted within the designated time frames. Upon scholarship award, a contract is signed by the recipient to indicate an understanding of and commitment to the scholarship requirements.

[OAR Docket #03-739; filed 4-23-03]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 110. LICENSING SERVICES

[OAR Docket #03-738]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

Part 3. Licensing Services - Residential Care and Agencies

340:110-1-40 through 340:110-1-47 [AMENDED]

340:110-1-47.1 through 340:110-1-47.2 [NEW]

340:110-1-51 through 340:110-1-55 [AMENDED]

(Reference APA WF # 02-45)

### AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and the Oklahoma Child Care Facilities Licensing Act, Sections 401 et seq. of Title 10 of the Oklahoma Statutes.

### DATES:

#### Comment period:

January 15 through February 14, 2003

#### Public hearing:

None held or requested

#### Adoption:

February 25, 2003

#### Submitted to Governor:

February 25, 2003

#### Submitted to House:

February 25, 2003

#### Submitted to Senate:

February 25, 2003

#### Gubernatorial approval:

April 10, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 22, 2003.

#### Final adoption:

April 22, 2003

#### Effective:

June 1, 2003

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATION BY REFERENCE:

N/A

#### ANALYSIS:

The revisions to Subchapter 1 of Chapter 110 improve the program and services provided by the Oklahoma Department of Human Services (OKDHS) by clarifying or upgrading the current requirements and providing direction to Division of Child Care licensing staff who assist residential facilities and child-placing agencies to meet requirements for licensure.

340:110-1-41 is revised to add a definition for "child care staff," and delete references to "therapeutic camp" and "children's shelter."

340:110-1-43 is revised to specify that the programs manager or designee is responsible for the final approval of all licensing recommendations.

340:110-1-43.1 is revised to add reference to two forms: Form OCC-37, Notice to Comply, which is used by a facility to document a plan of correction; and Form OCC-65, Independent Living File Review, which is used by licensing staff to record the agency's compliance with licensing requirements for independent living programs.

340:110-1-44 is revised to add the protocol followed by licensing staff when inquiries are received regarding the licensing of residential child care facilities.

340:110-1-45 is revised to add protocol for reopening a child care facility or child-placing agency and for withdrawal of an application.

340:110-1-46 is revised to add the protocol for issuing second and subsequent six-month permits.

340:110-1-47 is revised to add: repeated non-compliance by a child care facility requires additional monitoring visits from licensing staff, and may include a witness; a request for an increase or decrease in licensed capacity requires approval from the programs manager and additional documentation on Form OCC-3, Child Care Center Monitoring Report; and the protocol for inactive cases and a change in ownership of a child care facility.

340:110-1-47.1 is issued to describe the protocol for complaint investigations.

340:110-1-47.2 is issued to describe the required protocol for licensing staff to document and respond to non-compliances.

340:110-1-51 is revised to include specific procedures for criminal background checks and criminal history reports that involve a conviction.

340:110-1-52 is revised to include that OKDHS may enter into a consent agreement with a facility in lieu of license denial or revocation.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2003:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**PART 3. LICENSING SERVICES - RESIDENTIAL CARE AND AGENCIES**

**340:110-1-40. Purpose and policy of the law**

The purpose of this Part is to describe the responsibilities and functions of the Division of Child Care in regard to Residential Licensing Services.

**340:110-1-41. Definitions**

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

"Child care staff" means staff, including part-time, on-call, and substitute staff who provide direct care and supervision of residents. To be counted as required child care staff, workers must be engaged in providing care and meet the minimum qualification for child care staff.

"Child-placing agency" means an agency that provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full-time placement service for children away from their own homes, such as adoptive homes, foster family homes, group homes, and independent living programs.

"Children's shelter" means a public or private residential program that provides care and supervision for children not exceeding 30 days.

"Residential child care facility" means a 24-hour child care facility with children living together with adults other than their parents or relatives.

"Therapeutic camp" means a residential child care setting that provides a camping program with a therapeutic non-punitive environment and an experiential curriculum for children seven years of age and older who cannot function in the home, school, or community. It is a permanent facility providing 24-hour care for more than three consecutive months.

~~(A) A therapeutic camp may have a primitive camp that is a portion of the permanent camp premises or another site at which the basic needs for camp operation such as places of abode, water supply systems and permanent toilet or cooking facilities are not usually provided.~~

~~(B) A therapeutic camp may have trip camps in which children move from one site to another location. This trip camp originates from the permanent therapeutic camp facility and is limited to children who are at least 10 years old or have completed the fourth grade and up to 18 years.~~

**340:110-1-42. Legal base and authority**

(a) The Oklahoma Department of Human Services (OKDHS) is responsible for implementing the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 401 — ~~415~~ et seq.] This Act mandates that a license must be obtained from ~~the Department~~ OKDHS to provide care for children away from their own homes. The child care facilities subject to licensing that are addressed in this Part are residential child care facilities and child-placing agencies. Residential facilities operated by ~~the Department of Human Services~~ OKDHS are certified. The ~~Department's~~ responsibilities of OKDHS in relation to these facilities include:

- (1) developing minimum requirements for the care and protection of children cared for in child care facilities;
- (2) assisting child care providers in achieving maximum standards;
- (3) providing continuing technical assistance and consultation to the facility;
- (4) developing sufficient and adequate facilities for child care in the community;
- (5) issuing licenses based upon compliance with minimum requirements;
- (6) investigating complaints received against child care facilities; and
- (7) taking corrective action as authorized by the Oklahoma Child Care Facilities Licensing Act and stated policy based upon ~~noncompliance~~ non-compliance with minimum requirements.

~~(b) The Department~~ OKDHS has established the Division of Child Care to carry out the responsibility of the Oklahoma Child Care Facilities Licensing Act.

**340:110-1-43. Roles and responsibilities of licensing staff**

(a) Licensing staff for residential child care and child-placing agencies conduct onsite visits, document findings, provide technical assistance and consultation in their assigned areas, and make recommendations on ~~license issuance~~ all case actions to the programs manager. The programs manager or designee is responsible for the final approval of all licensing recommendations.

(b) Official licensing records for child care programs are maintained at State Office, Division of Child Care. Those records are open to the public upon request.

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(c) In addition to licensing child care facilities and agencies, licensing staff are responsible for:

- (1) communicating with local fire, health, and city officials within their assigned area regarding licensing rules and policy, requirements, inspections, and other issues related to a specific facility or child care in general;
- (2) facilitating or sponsoring training for child care providers; and
- (3) coordinating with other regulatory and investigative state entities in promoting quality care in residential settings within their assigned area.

### 340:110-1-43.1. Forms

Forms that apply to this Part are listed in (1) - through (18) of this Subsection.

- (1) OCC-16, Recommendation for Licensing or Certification.** Form OCC-16 is used by licensing staff and supervisors to make recommendations on the licensing or certification of child care facilities.
- (2) OCC-17, Six-Month Permit.** Form OCC-17 is a six-month temporary authorization for an applicant for a license to operate a child care facility until a license has been issued or a formal denial notice is given to the applicant.
- (3) OCC-18, Notice of Issuance of License for a Child Care Facility.** Form OCC-18 is a notice to the child care facility that it has complied with licensing requirements and is being issued a license.
- (4) OCC-22, Foster Care File Review.** Form OCC-22 is used by the licensing staff to record the agency's compliance or non-compliance with licensing requirements for foster home care.
- (5) OCC-37, Notice to Comply.** Form OCC-37 is used by a facility to document a plan of correction when there is serious or repeated non-compliance with licensing requirements.
- ~~(5)~~ **OCC-39, Child Care Staff Health Record.** Form OCC-39 is used by the examining physician to report findings of the physical examination which that is required for child-placing agency staff and staff of child care institutions at the time of employment.
- ~~(6)~~ **OCC-40, Application for License.** Form OCC-40 is used by an agency or residential facility to make application for a child care facility license.
- ~~(7)~~ **OCC-41, Child Care Staff Information.** Form OCC-41 is used to record information regarding child care facility staff persons as required by licensing requirements.
- ~~(8)~~ **OCC-43, Child Placing Agency Compliance Review.** Form OCC-43 is used by the licensing staff to assess compliance with child-placing agency requirements.
- ~~(9)~~ **OCC-44 Child Placing Agency Adoption Services File Review.** Form OCC-44 is used by the licensing staff to record the agency's compliance or non-compliance with licensing requirements for placement of children for adoption.
- ~~(10)~~ **OCC-46, Child Placing Agency Report of Licensing Visit.** Form OCC-46 is used by the licensing staff

to document compliance with requirements during a visit to a child-placing agency and record any other information obtained.

- (11) OCC-47, Agency Certification Report.** Form OCC-47 is completed by the child-placing agency staff to certify to the Oklahoma Department of Human Services that each foster home or Independent Living arrangement complies with the Licensing Requirements for Child-Placing Agencies.
- (12) OCC-50, Personnel File Review.** Form OCC-50 is used by the licensing staff to document compliance with personnel record requirements in residential, shelter, and child-placing agency requirements.
- (13) OCC-52, Declaration of Intent to Operate a Child Care Facility.**
- (14) OCC-53, Notice of Issuance of License Child Care Facility/Agency.** Form OCC-53 is used to notify operators of child-placing agencies and residential child care facilities of their licensing status. See also Form OCC-18.
- (15) OCC-54, Release of Child.** Form OCC-54 is used by residential facilities to notify the Division of Child Care when a child is no longer eligible for subsidy payment.
- (16) OCC-55, Child Admission Report.** Form OCC-55 is used ~~is used~~ by residential facilities to notify the Division of Child Care when a child is admitted and is eligible for subsidy payment.
- (17) OCC-56, Residential Compliance Review.** Form OCC-56 is used by licensing staff to assess compliance with residential requirements.
- (18) OCC-58, Residential Visit Sheet.** Form OCC-58 is used by the licensing staff to document compliance with requirements during a visit to a residential facility and record any other information obtained.
- (19) OCC-59, Resident's File Review.** Form OCC-59 is used ~~is used~~ by the licensing staff as part of the licensing process to document compliance with residential facility requirements.
- (20) OCC-60, Facilities Residential Child Care Policy and Records Check.** Form OCC-60 is used by licensing staff to document compliance with residential policy and procedure requirements.
- (21) OCC-65, Independent Living File Review.** Form OCC-65 is used by licensing staff to record the agency's compliance with licensing requirements for independent living programs.

### 340:110-1-44. Inquiries

Inquiries regarding the licensing of residential child care facilities or child-placing agencies are referred to the ~~Division of Child Care~~ either by telephone or mail licensing staff in whose geographical area the inquirer is located. Upon receipt of an inquiry, the licensing staff provides the inquirer with a copy of the applicable requirements and, when appropriate, makes referrals to other agencies involved in licensing residential child care facilities or child-placing agencies, such as the fire department, health department, and local city

regulatory offices. When the inquirer indicates an interest in becoming licensed, the licensing staff:-

- (1) reviews the requirements with the inquirer to help him or her determine whether the requirements can be met;
- (2) determines the qualifications of the inquirer to operate a facility; and
- (3) provides consultation to assist in the development of a residential child care facility or child-placing agency that can provide quality care.

**340:110-1-45. Application process**

(a) **Application packets.** Application packets, which include the appropriate licensing requirements and application forms, are mailed to potential licensees upon request. This packet includes:

- (1) Application for License, Form OCC-40;
- (2) Child Care Staff Information, Form OCC-41;
- (3) Child Care Staff Health Record, Form OCC-39; and
- (4) Compliance Review.

(b) **Receipt of application.** Upon receipt of the application packet in the Division of Child Care, the case is assigned a license number and a file is set up.

(c) **Reopening a residential child care facility or child-placing agency.** A new application must be completed when a residential facility or child-placing agency that has been closed is reopened.

(d) **Computer checks.** Computer checks to identify prior involvement with the Oklahoma Department of Human Services are completed on all adults who sign the application for a residential facility and child-placing agency license.

- (1) When there has been prior involvement with Child Welfare, the licensing staff reviews the case for information regarding the person's ability to meet licensing requirements.
- (2) Other cases are reviewed only if concerns exist.

(e) **Withdrawal of application.** If a residential child care facility or child-placing agency applicant wishes to withdraw the application prior to issuance of a license and the licensing staff confirms that no children are in care, the licensing staff closes the case.

**340:110-1-46. Types of issuances**

(a) **Six-month permit.** New residential child care facilities or child-placing agencies may be granted temporary authorization to operate on a six-month permit. If the facility was previously licensed at another location and had a pattern of compliance, the six-month permit may be waived. The recommendation to issue a permit is made after all forms and inspections have been completed and the facility is in compliance with all requirements including criminal history investigations, tuberculosis (TB) tests, and required number of qualified staff. During the six-month permit period, a minimum of three monitoring visits are completed to document that all requirements are met and to observe child care, where applicable. The items required to be on file for issuance of a six-month permit include:

- (1) Application for License, Form OCC-40;
- (2) list of current staff;
- (3) Child Care Staff Information, Form OCC-41;
- (4) TB test or chest x-ray results for direct care staff;
- (5) Fire Marshal's approval for residential facilities;
- (6) Health Department approval for residential facilities;
- (7) physical plant drawing for residential facilities;
- (8) compliance review questionnaire;
- (9) monitoring reports; and
- (10) Residential Child Care Policy and Records Check, Form OCC-60; and
- (11) Recommendation for Licensing or Certification, Form OCC-16.

(b) **Second and subsequent six-month permits.** If additional six-month permits are recommended, the procedures in (1) through (5) of this paragraph are followed.

- (1) The licensing staff consults with the programs manager prior to recommending a second permit.
- (2) The licensing staff sends a letter to the applicant notifying him or her of the recommendation each time a second or subsequent permit is recommended. The reason for the recommendation is clearly stated in the letter, with each area of non-compliance listed separately.
- (3) If the permit is due to repeated, numerous, or serious non-compliance with requirements, the licensing staff visits the facility at least monthly and is accompanied, when possible, by a witness. If at any point the non-compliance indicates the facility is unable or unwilling to meet licensing requirements, the programs manager is consulted to discuss negative sanctions.
- (4) If requirements are met before the expiration of the six-month permit, the issuance of a license may be recommended.
- (5) If children have not been in care on a regular basis during the previous year, the applicant is asked to withdraw the application for license.

(c) **License issuance.** When the licensing staff determines that the facility or agency is operating in compliance with their own policy and procedures and in compliance with the licensing requirements, a recommendation is made to issue a license. Prior to recommending issuance of a license, the licensing staff completes a minimum of three monitoring visits. A monitoring visit must be made within 30 days of the issuance date. A license is in effect unless it is revoked or the facility voluntarily closes.

(d) **Provisional license.** A provisional license may be issued for a period of one year to any facility or agency whose services are needed but who is temporarily unable to meet all requirements. A subsequent provisional license may be issued at the discretion of the Oklahoma Department of Human Services if an emergency exists.

- (1) A written statement from the operator requesting a provisional license and stating the reason for the request is submitted to the Division of Child Care.
- (2) The licensing staff submits to the Division of Child Care Form OCC-16.

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- (3) If at any time during the year the operator complies with the requirements, the licensing staff may recommend the issuance of a license.
- (d) **Transfer of license.** A license is not transferable.

### 340:110-1-47. Case management

(a) **Periodic visits.** Licensing staff conduct ~~three~~ two unannounced visits and one announced visit to residential facilities annually to document compliance with the requirements. Child-placing agencies are visited twice a year.

(1) If caseloads prevent staff from fulfilling this task, the programs manager consults with them on case management, and the number of required visits may be reduced. This adjustment is approved and documented in the case record by the programs manager.

(2) Licensing staff varies the time of monitoring visits to include observation of a meal at residential facilities.

(3) During each monitoring visit, the licensing staff observes the entire facility, including outdoor play space and vehicles used for transportation, if available.

(b) **Follow-up visits.** Repeated non-compliance requires additional visits that may include a witness. The witness may be the programs manager, another employee of the Oklahoma Department of Human Services, or an official of the health or fire department. The licensing staff and the witness sign the monitoring report.

(1) A non-compliance letter is written and sent to the operator when there is a serious or repeated non-compliance.

(2) Non-compliance letters list the areas of non-compliance that were observed and a time frame for compliance. Repeated non-compliance requires additional visits and could include a witness. The witness could be the programs manager, another employee of the Department, or an official of the health or fire department. The witness signs the visit sheet along with the licensing staff.

(c) **Consultation and technical assistance.** The licensing staff provides technical assistance to operators ~~in meeting to meet and maintaining~~ maintain minimum requirements. Consultation is provided to parties interested in licensure and to licensed facilities, and includes suggestions for improving the quality of care and for exceeding the minimum requirements.

(d) **Change of address.** When a facility moves to a new location, ~~the procedures contained in the Instructions to Staff of this Section are followed~~ licensing staff follow specific procedures to document the move.

(e) **Increase or decrease in licensed capacity.** When a facility ~~increases or decreases~~ requests an increase or decrease in licensed capacity, the procedures contained in the Instructions to Staff of this Section are followed. It is documented on Form OCC-3, Child Care Center Monitoring Report, page 4, and must be approved by the programs manager. If the request to increase capacity is due to additional physical space, the required documentation includes:

- (1) reason for the increase;
- (2) fire department approval;
- (3) health department approval;

(4) physical plant drawing indicating the measurements, total square footage, and number of additional children that can be accommodated; and

(5) additional staff, if applicable.

(f) **Complaints.** ~~The Oklahoma Child Care Facilities Licensing Act [10 O.S. § 406] mandates that the Department conduct a full investigation of any complaint alleging a violation against the Act or of any licensing requirement. The procedures to be followed in conducting complaint investigations are contained in the Instructions to Staff of this Section.~~ **Inactive cases.** If children have not been in care or services have not been provided on a regular basis within a 12 month period, the option of voluntary closure is discussed with the provider.

(1) A provider who wants his or her case to remain open must submit a request in writing including a statement that the provider will notify licensing staff when care is resumed.

(2) Licensing staff contact the provider by telephone or letter periodically to update the provider's status.

(3) Licensing staff visit the inactive facility at least once a year to verify and document compliance with licensing requirements.

(g) **Change in ownership.** If a residential program or child-placing agency assumes new ownership, the case file is closed, and the program must apply for new license under the new owner.

### 340:110-1-47.1. Complaint investigations

(a) **Legal basis.** The Child Care Facilities Licensing Act (Act), Sections 401 et seq. of Title 10 of the Oklahoma Statutes, mandates that the Oklahoma Department of Human Services (OKDHS) conduct a full investigation of a complaint alleging a violation against the Act or any licensing requirement.

(b) **Receipt of the complaint.** Complaints may be made to Division of Child Care, Licensing Services, in writing, in person, or by telephone.

(c) **Complaint information.** The licensing staff obtains as much relevant information as possible from the complainant.

(d) **Screening complaints.** The licensing staff accepts a complaint for investigation when it alleges:

(1) non-compliance with licensing requirements;

(2) operation of an unlicensed facility in violation of the Act; or

(3) abuse or neglect of a child in care.

(e) **Disposition of complaints.** Upon receipt of a complaint, the licensing staff determines a disposition.

(f) **The investigation.** The licensing staff conducts a full investigation obtaining sufficient information to make a finding.

(g) **Telephone investigation.** With supervisory approval, the licensing staff may investigate a complaint by telephone. The discussion and, if necessary, an agreed-upon plan of correction is documented on page 4 of Form OCC-3, Child Care Center Monitoring Report. A copy is sent to the operator. A complaint may be investigated by telephone only if:

- (1) the alleged non-compliance does not place children at risk; for example, the facility did not serve milk one day or children have head lice;

- (2) the facility has not had numerous, repeated, or serious non-compliance; and
- (3) a monitoring visit has been made in the last three months during which substantial compliance was documented.

**(h) Procedure for investigating allegations of operating an unlicensed facility.** When allegations of operating an unlicensed facility are investigated, the procedure contained in this subsection is followed.

(1) When the report does not indicate that children are at immediate risk of harm, the procedure in this paragraph is followed.

(A) If a complaint is made in person or by telephone, the licensing staff obtains and records all relevant information on Form OCC-12, Complaint Report and Complaint Summary.

(B) When advertisements indicate a residential facility or child-placing agency is operating in violation of the Act, information is recorded with the advertisement attached.

(C) The licensing staff mails to the operator the licensing requirements and a letter which includes information about licensure and a request for a response within 14 days.

(D) If a response is not received within 14 days, a visit is made to the facility to:

- (i) determine whether services are being provided;
- (ii) explain the Act;
- (iii) ask the operator to file an application for licensure or cease care; and
- (iv) request the operator to advise the licensing staff of the decision within ten days.

(E) If a response is not received within ten days, several contacts are made or attempted to encourage the operator of an unlicensed facility to comply with the Act.

(F) If the operator fails to apply for licensure as required by the Act, the licensing staff consults with the programs manager and, when appropriate, makes a recommendation to the district attorney.

(2) When children may be at risk, the licensing staff obtains and records as much information as possible, notifies the programs manager, and verifies the validity of the complaint with a visit to the facility.

(A) If the complaint is substantiated and children are at risk, the licensing staff requests the caregiver cease operation immediately.

(B) If the operator refuses, the licensing staff informs the caregiver that legal action may be initiated.

(C) Prior to contacting the district attorney, the programs manager reviews the case with the licensing staff to determine whether legal action is indicated.

(3) When legal action is warranted, a request for criminal proceedings or an injunction is made to the local district attorney. The recommendation is made in writing and

includes documentation of the facts of the case. The programs manager informs the OKDHS Legal Division of the request to the local district attorney for legal action.

(4) If a local district attorney will not take action against a facility, the OKDHS Legal Division is notified. A referral may be made to the attorney general by the programs manager.

(i) **Child abuse and neglect complaints.** Upon receipt of a complaint alleging abuse of a child in care, the licensing staff immediately notifies the programs manager and makes a referral to the Office of Client Advocacy.

(i) **Findings.** After the investigation is completed, the licensing staff, in consultation with the programs manager, as appropriate, makes a finding as to whether the complaint is substantiated or unsubstantiated.

(1) **Substantiated.** A finding of substantiated is made when a weighing of the information obtained during the investigation clearly indicates that the facility violated a licensing requirement or the Act.

(2) **Unsubstantiated.** A finding of unsubstantiated is made when the allegation is found to be uncertain or ruled out. A finding is:

(A) uncertain when the information does not lead to a definite conclusion. An example is when:

- (i) there is insufficient or conflicting information on which to conclude that a violation occurred; or
- (ii) information required to make a finding is unavailable; or

(B) ruled out when a weighing of the information clearly indicates there was not a violation of a licensing requirement or the Act.

(k) **Documentation of findings.** Upon completion of the investigation, the licensing staff documents the findings and notifies the provider in writing.

(l) **Notice to Comply.** When a serious complaint is substantiated, the licensing staff advises the facility to correct the violations immediately, using Form OCC-37, Notice to Comply. The facility must complete a plan of correction.

**340:110-1-47.2. Non-compliance with requirements**

(a) **Documentation of non-compliance.** The Division of Child Care licensing staff documents areas of non-compliance as well as the discussion with the operator clearly and concisely on the monitoring report.

(1) A plan of correction, including an agreed-upon time period for correction of the non-compliance, is documented for each non-compliance on the monitoring report. The plan of correction includes, if applicable, how compliance will be maintained on an ongoing basis.

(2) Immediate correction is required when the non-compliance has a direct impact on the health, safety, or well-being of a child(ren) in care.

(3) The licensing staff requests that the operator sign the monitoring report, explaining that the operator's signature indicates acknowledgment of information recorded.

(4) If the person in charge refuses to sign, the refusal is documented on the report.

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- (5) The operator is given a copy of the completed monitoring report.
- (b) **Referrals to fire and health officials.** If non-compliance regarding fire or health requirements places children at risk or remains uncorrected, the licensing staff requests an inspection by a fire, health, or Oklahoma Department of Environmental Quality (ODEQ) official.
- (c) **Case management responses to non-compliant facilities.** The following additional responses may be used when there is repeated, numerous, or serious non-compliance.
- (1) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, if necessary, to assist the operator in meeting and maintaining licensing requirements.
- (2) Follow-up phone call. Phone calls are documented on page 4 of Form OCC-3, Monitoring Report, and a copy is mailed to the facility.
- (3) **Non-compliance letters.** A non-compliance letter may be written to the operator. The licensing staff sends a copy of the monitoring report and non-compliance letter to the governing board or owner, if applicable.
- (4) **Return monitoring visit.** A return monitoring visit may be made if there is repeated, numerous, or serious non-compliance with licensing requirements or when non-compliance places children at imminent risk of harm. If the non-compliance is associated with a specific time of day, such as understaffing after school or a lack of early morning supervision, the return visit is made at that approximate time.
- (5) **Use of witnesses.** The licensing staff may be accompanied by a witness during monitoring visits if the facility has had numerous, repeated, or serious non-compliances or if denial or revocation of the license is being considered. The witness may be an Oklahoma Department of Human Services (OKDHS) employee or a representative from the health or fire department. The witness signs the monitoring report in the space provided.
- (6) **Increased monitoring visits.** Licensing staff may increase the frequency of monitoring when there has been numerous, repeated, or serious non-compliance or when the need for additional technical assistance is indicated.
- (7) **Notice to comply.** The licensing staff provides the facility with Form OCC-37, Notice to Comply, on which the facility documents the plan of correction. Immediate correction may be required if the non-compliance places the health, safety, or well-being of a child(ren) in care at risk.
- (A) If the plan submitted by the operator is unacceptable to the licensing staff, the staff negotiates and documents a revised plan.
- (B) If the operator does not submit the response to Form OCC-37 within the specified time period, the licensing staff contacts the operator and documents the conversation. If concerns exist or the operator is uncooperative, the licensing staff sends a letter stating that failure to complete Form OCC-37 may result in revocation of license, denial of the application, or the filing of an injunction or emergency order.
- (8) **Office conference.** The licensing staff may schedule an office conference with the operator of the facility. The programs manager is present at the office conference. Areas of non-compliance and progress toward meeting the plan(s) of correction are reviewed and technical assistance is offered. The conference is documented on page 4 of Form OCC-3, which is signed by the licensing staff, the operator, and any witnesses present. Form OCC-37 is completed if one addressing these issues has not been completed recently.
- (9) **Consent agreement.** OKDHS and the operator of the facility may enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial or revocation.
- (10) **Revocation.** The licensing staff recommends that the license be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children.
- (11) **Voluntary closure.** The operator is asked to voluntarily close the facility.
- (d) **Case management responses when children are at risk.** If the licensing staff documents non-compliance with requirements or is investigating a complaint that may place the health, safety, or well-being of children at imminent risk of harm, options to consider during consultation with the operator and the programs manager are outlined in this subsection.
- (1) The operator is asked to immediately correct the non-compliance; for example, the staff person will not work at the facility pending the outcome of an investigation.
- (2) The operator is asked to voluntarily close the facility.
- (3) The licensing staff requests an emergency order when immediate action is needed to protect children in a child care facility that is on permit, licensed, on notice of revocation or denial, or operating during an appeal following revocation or denial.
- (4) The operator agrees to enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial or revocation.
- (5) The licensing staff recommends that the license be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children.
- (6) An injunction may be requested when the residential facility or child-placing agency is:
- (A) unlicensed;
- (B) on application status;
- (C) licensed;
- (D) violating an emergency order;
- (E) operating during an appeal following revocation or denial and children are at risk; or
- (F) violating the notice to cease care following revocation or denial of license.

**340:110-1-51. Criminal background checks**

(a) **Provider.** Section 404.1 et seq. of Title 10 of the Oklahoma Statutes requires that every child care facility arrange, prior to employment, for a criminal history investigation for:

- (1) any person making application to establish or operate a residential child care facility and child-placing agency;
- (2) any person to be employed by a child care facility or child-placing agency, including all caregivers, auxiliary staff, and substitute or assistant caregivers; and
- (3) others who have unsupervised access to children, such as ~~lab~~ students, ~~WEP~~ workers, contracted staff, volunteers, or custodians; and
- (4) adults, including providers' spouses or adult children, who live in the child care facility.

(b) **Exceptions.** Criminal history investigations are not required for:

- (1) new staff who have documentation of a criminal history investigation within the last 12 months;
- (2) staff who move to a program operated by the same organization;
- (3) contracted staff who provide transportation, lessons, or other services if facility staff are present with children at all times; and
- (4) parent volunteers who transport children on an irregular basis; and
- (45) providers' children who become adults, age 18, during continuous residence at the licensed facility.

(e) ~~**Children residing in a child care facility.** A criminal history investigation may be requested on a child over thirteen years of age residing in a child care facility if criminal activity is reported to Residential Licensing.~~

(ec) **Authorized agencies.** Criminal history investigations are acceptable only when conducted by:

- (1) the Oklahoma State Bureau of Investigation (OSBI); and
- (2) the authorized agency in the previous state of residence if the individual person has resided in Oklahoma for less than one year.

(ed) **Sex Offenders Registry.** The OSBI report must include a search of the Department of Corrections' files maintained by the OSBI pursuant to the Sex Offenders Registration Act. According to Section 404.1 of Title 10 of the Oklahoma Statutes, it is unlawful for any person who is required to register pursuant to the Sex Offenders Registration Act to work with or provide services to children, to live in a child care facility, or to be employed or contracted by the facility to care for children. If it is determined that a facility has violated this Statute, the Oklahoma Department of Human Services (OKDHS) may pursue:

- (1) an emergency order;
- (2) revocation of the license or denial of the application for license;
- (3) an injunction; or
- (4) ~~an administrative penalty not to exceed Ten Thousand Dollars (\$10,000); or~~
- (54) referral for criminal proceedings.

(f) ~~**Documentation and procedure.** The licensing staff provides information and the criminal history investigation request forms to licensees and persons interested in becoming licensed.~~

(ge) **Convictions.** The licensing staff reviews each criminal history report.

(1) If a report includes a charge without a disposition for an offense listed in licensing requirements or which could affect contract eligibility, a copy of the disposition is obtained.

(2) If a report includes a plea of guilty or nolo contendere, no contest, or conviction for an offense listed in licensing requirements, the licensing staff:

(A) advises the administrator or director of the facility that the person does not meet licensing requirements;

(B) informs the administrator or director of the facility that he or she may request a waiver from the Division of Child Care (DCC) programs manager unless the person was convicted of a crime pursuant to the Sex Offenders Registration Act, pursuant to OAC 340:110-1-51(d);

(C) provides the administrator or director of the facility with a copy of the items considered for a waiver as listed in OAC 340:110-1-51(h); and

(D) documents assurance from the administrator or director of the facility that the person in question will not be employed, work with children, or be present at the facility until a decision has been made regarding the request for a waiver, pursuant to OAC 340:110-1-51(h).

(3) If the facility administrator's or director's criminal history report includes a conviction of fiscal mismanagement, such as embezzlement or fraud, or if there are repeated convictions that indicate a pattern of criminal activity, a copy of the report is sent to the DCC programs manager.

(hf) ~~**Waiver.** A waiver from the~~ The prohibition to employ- ~~ment employ of a person with criminal history may be waived if is requested in writing by the facility's owner, director, or home provider administrator.~~ However, a waiver is not granted to any person who is required to register pursuant to the Sex Offenders Registration Act. The decision to grant a waiver is made by the program programs manager with consultation with the Legal Division as needed. The decision is based on documentation indicating that the health, safety, and well-being of children ~~will is not be~~ endangered. Criteria considered include the:

- (1) type of crime or offense for which the individual person was convicted or a finding made;
- (2) nature of the offense(s);
- (3) age of the individual person at the time of the offense(s);
- (4) circumstances surrounding commission of the offense(s) that demonstrate whether it is likely that the person will re-offend;
- (5) number of offenses for which the individual person was convicted or findings made;

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- (6) length of time that has elapsed since the last conviction or finding;
- (7) relationship of the offense(s) and the person's ability to care for children;
- (8) evidence of rehabilitation, ~~and~~ or education activities such as counseling since the offense was committed;
- (9) statement from the ~~individual with~~ person who has the criminal history; and
- (10) opinions of reliable community members concerning the ~~individual~~ person in question.

### 340:110-1-52. Legal actions

(a) ~~Procedure for documenting non-compliance.~~ The Instructions to Staff of this Section contain the procedures for documenting non-compliance with requirements prior to the recommendation of denying or revoking a license. The licensing staff frequently consults with the programs manager.

(ba) ~~Denial or revocation of license Failure to meet requirements.~~ When numerous, repeated, or serious non-compliance with licensing requirements is observed and documented or when ~~When~~ an operator is unable to comply with the requirements or ~~has failed~~ fails to protect the health and safety of children, the Oklahoma Department of Human Services (OKDHS) ~~can~~ may deny or revoke the license. Denial or revocation of a license is based on observation, investigation, and documentation that the operator is unable or unwilling to comply with minimum requirements.

- (1) Denial of a license is recommended for a facility or agency that has filed an application for license.
- (2) Revocation of a license is recommended for a facility or agency that is currently licensed.

(b) Consent agreement. OKDHS may offer to enter into a consent agreement with a facility in lieu of license denial or revocation. If such action has already taken place, a consent agreement may be used during the appeals process if the facility comes into compliance with licensing requirements. The use of a consent agreement is not required prior to denying or revoking a license.

(e) ~~Licensing staff's recommendation.~~ The licensing staff consults with the programs manager regarding the revocation or denial recommendation. If the programs manager concurs with the licensing staff recommendation, the staff notifies the facility in writing that the recommendation has been made. Visits to the facility continue.

(dc) ~~Division of Child Care recommendations Denial or revocation of license.~~ A denial or revocation is conducted as outlined in paragraphs (1)–(7) of this subsection. The licensing staff consults with the programs manager regarding the revocation or denial recommendation.

- (1) The licensing staff prepares a summary of non-compliance and submits it to the programs manager for review.
- (42) The licensing staff recommendation for denial or revocation is reviewed by the Director of Child Care Services for approval or further investigation.
- (23) Notification of proposed denial or revocation is sent by certified mail to the operator at least 30 days prior to the effective date of the proposed action with a copy of

the recommendation summary. The right to appeal the decision is included in the correspondence. A copy of the correspondence is sent to ~~the licensing staff and~~ the OKDHS Legal Division. At the time the facility is given notice in writing of the revocation or denial of license, ~~the Department~~ OKDHS also advises parents or custodians of children attending the facility of such action by written notification and the posting of an announcement in the facility.

(34) Appeals must be submitted to the Oklahoma Commission for Human Services by the operator within 30 days of receipt of the notice. If the operator does not appeal the decision within the time period, a letter is sent by regular mail to the operator giving notice that the license is denied or revoked and stating the effective date.

(45) If an appeal is made by an operator to ~~the Department~~ OKDHS, a hearing is scheduled by the ~~DHS~~ OKDHS Appeals Unit.

(56) The operator is notified of the hearing by personal service, or by delivery to the proper address by registered mail, at least two weeks prior to the date of the hearing.

(67) If the administrative hearing officer upholds the ~~Department's~~ OKDHS decision, the hearing officer provides a written notice at the conclusion of the hearing, which contains an explanation of appeal rights.

(78) If the operator continues to maintain and operate the facility ~~for child care or agency~~ after a final decision revoking or denying licensure, the Director of Child Care Services may request that the Attorney General or the appropriate district attorney secure a civil injunction or initiate criminal proceedings.

(ed) Emergency order. An emergency order may be issued by ~~the Department~~ OKDHS when immediate action is needed to protect the health, safety, or welfare of children in a child care facility.

(1) If the operator is unwilling to voluntarily correct the hazardous situation, the licensing staff notifies the programs manager of the circumstances. If the programs manager agrees that an emergency order is warranted, all supporting documentation is given to the Director of Child Care Services for review. The written order is issued and signed by the programs manager. If the risk is such that children must be immediately removed from the ~~child care residential facility or placement through a child-placing agency~~, the Director of Child Care Services may give verbal approval for removal of children. The ~~operator administrator or director~~ and parents or custodians are told that the ~~child care~~ facility will not be open on the following day; or parents or custodians are contacted to pick up their children immediately. If every effort has been made to reach the parents or custodians, and children are at immediate risk, the licensing manager contacts the police to remove the children.

(2) The emergency order states the existence of an emergency and sets forth remedies such as removal of children from the facility or closure of a facility. The order is effective immediately and includes the right to appeal the decision. The emergency order may be rescinded

when the licensing manager verifies correction of the hazardous situation. Upon receipt of such documentation, the Director of Child Care Services notifies the operator in writing that the order has been rescinded.

(3) The operator may request a hearing by filing a written request within ten days of receipt of the emergency order. The hearing is conducted within ten days from receipt of the operator's request.

(4) If unsatisfied with the results of the Department OKDHS hearing, the operator may appeal to the district court within 30 days of the decision of the administrative hearing officer.

(e) **Rescinding the order.** The emergency order may be rescinded when the licensing staff verifies correction of the hazardous situation. Upon receipt of such documentation, the programs manager notifies the operator in writing that the order has been rescinded.

(f) **Hearing process.** The operator may request a hearing by filing a written request within ten days of receipt of the emergency order. The hearing is conducted within ten days from receipt of the operator's request. An OKDHS hearing officer conducts the hearing.

(g) **Appeal rights.** If the results of the OKDHS hearings are disputed, the operator may file an appeal in district court within ten days of the decision.

(h) **Injunction.** If an operator violates the conditions set forth in the emergency order, an injunction from district court is requested by the program managers or designee.

~~(f) **Unlicensed residential facilities or child-placing agencies.** Section 405 of the Oklahoma Child Care Facilities Licensing Act requires the licensure of child care facilities. Section 409 of this Act states any person or child care facility may be enjoined from maintaining and operating such facility for violations of any provisions of this Act by suit brought in the name of the attorney general or by a district attorney. Licensing staff may recommend that a district attorney take action against unlicensed facilities. If a local district attorney will not take action against a facility, the case is referred to the attorney general with approval of the Department's general counsel and with the signature and approval of the director.~~

~~(1) **Procedure for investigation.** The procedure for investigating an unlicensed residential child care facility or child placing agency is outlined in subparagraphs (A) – (F) of this paragraph.~~

~~(A) The licensing staff records all relevant information about the operation of the facility or agency from observation or from the complainant.~~

~~(B) The licensing staff mails an informational letter and a copy of the licensing requirements to the facility or agency.~~

~~(C) If no response is received within 14 days, the licensing staff contacts the facility or agency.~~

~~(D) The facility or agency is encouraged to file an application for licensure. The procedure is discussed and an application packet is given to the facility or agency to complete and return to the Division of Child Care.~~

~~(E) The licensing staff allows 30 days in which to receive the application before contacting the facility or agency regarding the status of the application.~~

~~(F) When legal action is warranted, a request for criminal proceedings or an injunction is made to the local district attorney. The recommendation is made in writing and includes documentation of the facts of the case. The Director of Child Care Services or designee informs the Legal Division of the request for legal action by the local district attorney.~~

~~(2) **Immediate risk determined.** If children in a residential child care program are at immediate risk of harm, the Director of Child Care Services is immediately contacted. The programs manager requests criminal proceedings or an injunction from the local district attorney.~~

**340:110-1-53. Case closures**

(a) A case is closed if when:

- (1) the residential child care facility moves to a new location;
- (2) the residential child care facility or child-placing agency is sold to a new owner;
- (3) care of children is discontinued, or in a child-placing agency, operation is discontinued; or
- (4) the license is revoked or the application for license denied.

(b) When a licensed child care facility closes of its own accord, the licensing staff submits to the Division of Child Care, Residential Licensing Services programs manager, Form K-17, Child Care Facility Services, a narrative, and a copy of the letter sent to the facility verifying closure.

(c) If the case is closed because of revocation or denial, the facility cannot make application for a new child care facility license for five years following closure of the facility.

**340:110-1-54. Grievance and complaint policy and procedure**

(a) **Grievance and complaint policy.** The owner, director, or ~~superintendent~~ administrator of a licensed child care facility may file a grievance or complaint regarding the application of any written or unwritten policy, rule, or regulation of the Oklahoma Department of Human Services (OKDHS), or any decision by an employee of ~~the Department OKDHS~~ that affects ~~his or her~~ the facility. A grievance or complaint ~~will~~ is not ~~be~~ accepted concerning the denial or revocation of a child care facility license. The procedure for appealing this action is provided for in the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 407]

(b) **Grievance or complaint procedure.** Persons wishing to file a grievance or complaint are encouraged to seek informal resolution by contacting the programs manager, who will seek to resolve the matter. If a resolution ~~cannot be~~ is not reached at the supervisory level, the grievant ~~will be~~ is requested to file a written request with the Director of Child Care Services. The Director of Child Care Services responds to written grievances or complaints within 14 days after receipt. When the grievant

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or complainant is not satisfied with the proposed resolution, the grievance may be appealed to:

- (1) the associate director for programs; and
- (2) the ~~director~~ Director of the Department of Human Services OKDHS.

## 340:110-1-55. Public inspection of licensing files

(a) **Legal basis.** The Oklahoma Department of Human Services (OKDHS) is subject to the Oklahoma Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, which mandates that public records are open for public inspection unless they are required by law to be kept confidential.

(b) **Licensing records.** All ~~Department~~ OKDHS records of facilities required to be licensed under Sections 401 through 410 of Title 10 of the Oklahoma Statutes are considered public records and are open and available for public inspection during reasonable hours. This includes records pertaining to an investigation of an unlicensed facility. However, information obtained concerning a report of a violation of a licensing requirement is confidential pursuant to Section 406 of Title 10 with the exception of a summary of allegations and findings of an investigation involving a child care facility that does not disclose identities but that permits parents to evaluate the facility. In addition, Section 7005-1.2 of Title 10 of the Oklahoma Statutes mandates confidentiality of child abuse records.

(c) **Location of case records.** Child care facility licensing records are located in the Division of Child Care or the office of the licensing staff and are inspected at that location. Licensing records ~~are to~~ may be inspected by the public in the presence of licensing staff.

(d) **Preparation of case files for inspection.** The licensing staff carefully reviews the entire record and removes confidential information.

(e) **Fees for photocopying.** For photocopy fee information refer to OAC 340:2-21-16.

(f) **Release of confidential information.** A complete case file that includes confidential information may be provided only to certain persons according to applicable laws and regulations, ~~for example, such as the~~ OKDHS Legal Division, Child Welfare and Division of Children and Family Services, law enforcement officials, and upon order of a court of competent jurisdiction.

[OAR Docket #03-738; filed 4-23-03]

## TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-614]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. The Board  
360:1-3-8. [AMENDED]

360:1-3-8.1. [NEW]

### **AUTHORITY:**

Oklahoma State and Education Employees Group Insurance Board, 74 O.S., Sections 1304, 1306 and 1344

### **DATES:**

**Comment Period:**  
January 6, 2003

### **Public Hearing:**

January 6, 2003

### **Adoption:**

January 24, 2003

### **Submitted to Governor:**

January 24, 2003

### **Submitted to House:**

January 24, 2003

### **Submitted to Senate:**

January 24, 2003

### **Gubernatorial approval:**

March 5, 2003

### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 26, 2003

### **Final adoption:**

March 26, 2003

### **Effective:**

January 1, 2004

### **SUPERSEDED EMERGENCY ACTIONS:**

n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **ANALYSIS:**

Changes to Chapter 1 clarify definitions, conform rules to recent benefit changes, clarify language, and clarify existing plan exclusions.

### **CONTACT PERSON:**

Gary Goff, Attorney, Assistant Administrator, 405-717-8744

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2004:**

## SUBCHAPTER 3. THE BOARD

### **360:1-3-8. Confidentiality of medical records**

(a) All information, documents, medical reports and copies thereof contained in a member's insurance file held by the Board shall be confidential and shall not be reviewed by unauthorized parties, without written permission of the individual or provider, or by court order. The confidentiality of a member's information is maintained when the member's information held by the Board is utilized for health management and communicated ~~among~~ among:

(~~1~~) the Board;

(~~2~~) the Board's contracted Third Party Administrators and consultants;

(~~3~~) providers to the member and

(~~4~~) the member, according to statutory provisions for privilege and confidentiality or written agreements to protect the confidentiality and non-disclosure of the information. The Board will honor only medical releases signed by a covered employee or dependent within one hundred eighty [180] days of the date the release was signed.

(b) A member's health information is protected by this rule and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulations as codified in 45 Code of Federal Regulations Parts 160 and 164.

**360:1-3-8.1. Participating entities/business associate protection of confidential health information**

(a) The participating entity/business associate may only use and disclose the member's health information for the purposes of a member's treatment, to facilitate payment for Plan benefits or for participating entity/business associate business operations on behalf of the member. The participating entity/business associate may not use or further disclose a member's health information other than permitted by Board rules or described in a written contract between the Board and the participating entity/business associate.

(b) Participating entities/business associates shall protect a member's confidential health information according to the following guidelines. Participating entity/business associate shall:

- (1) not use or disclose a member's health information other than permitted in these rules; described in a written contract with the Board or required by law.
- (2) ensure that subcontractors or agents of the participating entity/business associate maintain confidentiality of any health information provided to its subcontractors or agents.
- (3) not use or disclose confidential health information for employment related actions concerning the member, unless required by law.
- (4) notify the Board within five [5] working days when the participating entity/business associate becomes aware of any use or disclosure of a member's health information that is inconsistent with this rule and make an accounting of these disclosures available for the Board and each member.
- (5) allow a member to access and review health information on file with the participating entity/business associate and submit amending statements for inclusion in their health information file.
- (6) establish procedures to protect a member's health information and account for disclosures not authorized by these rules.
- (7) identify the participating entity/business associate employees who may access a member's health information and restrict access to those persons.
- (8) return to the Board or destroy a member's health information when no longer required by the participating entity/business associate, and if not feasible, limit the use or disclosure to the required purposes.
- (9) ensure that proper security is in place to protect electronically stored health information and
- (10) make internal practices, books and records concerning uses and disclosures of protected health information available for inspection by the appropriate authority. A written contract between the Board and participating entity/business associate shall not limit

the participating entity/business associate protection of a member's health information to an extent less than described in this rule.

*[OAR Docket #03-614; filed 4-9-03]*

**TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD  
CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, LIFE, AND DENTAL PLANS**

*[OAR Docket #03-615]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

360:10-1-2. [AMENDED]

Subchapter 3. Administration of Plans

360:10-3-3.5. [AMENDED]

360:10-3-4. [AMENDED]

360:10-3-20. [AMENDED]

360:10-3-24. [AMENDED]

360:10-3-25. [AMENDED]

360:10-3-27. [AMENDED]

Subchapter 5. Coverage and Limitations

Part 3. Health Benefit Plans

360:10-5-20. [AMENDED]

Part 5. Life Benefits

360:10-5-32. [AMENDED]

360:10-5-34. [AMENDED]

Part 9. Dental Benefits, Limitations, and Exclusions

360:10-5-61. [AMENDED]

**AUTHORITY:**

Oklahoma State and Education Employees Group Insurance Board, 74 O.S., Sections 1304, 1306 and 1344

**DATES:**

**Comment Period:**  
January 6, 2003

**Public Hearing:**  
January 6, 2003

**Adoption:**  
January 24, 2003

**Submitted to Governor:**  
January 24, 2003

**Submitted to House:**  
January 24, 2003

**Submitted to Senate:**  
January 24, 2003

**Gubernatorial approval:**  
March 5, 2003

**Legislative approval:**  
Failure of the Legislature to disapprove the rules resulted in approval on March 26, 2003

**Final adoption:**  
March 26, 2003

**Effective:**  
January 1, 2004

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 3. Administration of Plans

360:10-3-27. [AMENDED]

Subchapter 5. Coverage of Limitations

Part 3. Health Benefit Plans

360:10-5-20. [AMENDED]

Part 5. Life Benefits

360:10-5-34 [AMENDED]

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Part 9. Dental Benefits, Limitations, and Exclusions  
360:10-5-61. [AMENDED]

**Gubernatorial approval:**  
August 28, 2002

**Register publication:**  
19 Ok Reg 3051

**Docket number:**  
02-1325

**INCORPORATIONS BY REFERENCE:**  
n/a

**ANALYSIS:**  
Changes to Chapter 10 clarify definitions, conform rules to recent benefit changes, clarify language, and clarify existing plan exclusions.

**CONTACT PERSON:**  
Gary Goff, Attorney, Assistant Administrator, 405-717-8744

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2004:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 360:10-1-2. Definitions

The following words and terms as defined by the Insurance Board, when used in this chapter, shall have the following meaning, unless the content clearly indicates otherwise:

**"Active employee"** means an employee in the service of a participating entity who receives compensation for services actually rendered and is listed on the payrolls and personnel records of said employer, as a current and present employee, including employees who are otherwise eligible who are on approved leave without pay, not to exceed twenty-four [24] months. An education employee absent from employment, not to exceed eight [8] years, because of election or appointment as local, state, or national education association officer who is otherwise eligible prior to taking approved leave without pay will be considered an eligible, active employee. A person elected by popular vote will be considered an eligible employee during his tenure of office. Eligible employees are defined by statute. [74 O.S. §1303 and §1315]

**"Administrative error"** occurs when the coverage elections the ~~employee~~member makes are not the same as those entered into payroll for deduction from the ~~employee's~~member's paycheck. This does not include untimely ~~employee~~member coverage elections or ~~employee~~member misrepresentation. When such an administrative error results in underpaid premiums, full payment to the Board shall be required before coverage elected by the ~~employee~~member can be made effective. If overpayment occurs, the Board shall refund overpaid funds to the appropriate party.

**"Administrator"** means the Administrator of the Oklahoma State and Education Employees Group Insurance Program or his designee.

**"Attorney representing the Board"** means any attorney designated by the Administrator to appear on behalf of the Board.

**"Business associate"** shall have the meaning given to "Business Associate" under the Health Insurance Portability and Accountability Act of 1996, Privacy Rule, including, but not limited to, 45 CFR §160.103.

**"Carrier"** means the State of Oklahoma.

**"Comprehensive benefits"** means benefits which reimburse the expense of facility room and board, other hospital services, certain out-patient expenses, maternity benefits, surgical expense, including obstetrical care, in-hospital medical care expense, diagnostic radiological and laboratory benefits, providers' services provided by house and office calls, treatments administered in providers' office, prescription drugs, psychiatric services, Christian Science practitioners' services, Christian Science nurses' services, optometric medical services for injury or illness of the eye, home health care, home nursing service, hospice care and such other benefits as may be determined by the Board. Such benefits shall be provided on a copayment or coinsurance basis, the insured to pay a proportion of the cost of such benefits, and may be subject to a deductible that applies to all or part of the benefits as determined by the Board. [74 O.S. §1303 (14)]

**"Cosmetic procedure"** means a procedure that primarily serves to improve appearance.

**"Custodial care"** means treatment or services regardless of who recommends them or where they are provided, that could be given safely and reasonably by a person not medically skilled. These services are designed mainly to help the patient with daily living activities. These activities include but are not limited to: personal care as in walking, getting in and out of bed, bathing, eating by spoon, tube or gastrostomy, exercising, dressing, using toilet, preparing meals or special diets, moving the patient, acting as companion or sitter, and supervising medication which can usually be self-administered.

**"Dependent"** means the primary member's spouse (if not legally separated), including common law. Dependents also include a member's unmarried child up to the child's nineteenth [19<sup>th</sup>] birthday, regardless of residence, provided that the member is primarily responsible for the child's support. This includes a stepchild or child who lives with the member in a regular parent-child relationship, or a child living with the member in a normal parent-child relationship where the member has adopted the child, or has been appointed guardian by a court. It also includes a stepchild who does not live with the member, when the primary member's spouse is covered by the Plan and has been ordered by a court to provide health insurance for his/her children, regardless of residence. A child may be provided coverage up to the age of twenty-five [25] if the child is dependent upon the member for support and is enrolled as a full time student at an accredited secondary school, college, university or institution of higher learning. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age nineteen [19]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet Plan requirements. [74 O.S. § 1303 (13)]

(A) A dependent who becomes eligible for this insurance program by virtue of his/her employment, is no longer considered an eligible dependent for health and dental insurance.

(B) A person cannot be enrolled as a principal insured and also as a dependent for any benefit options except dependent life.

**"Durable medical equipment"** means medically necessary equipment, prescribed by a provider, which serves a therapeutic purpose in the treatment of an illness or an injury. Durable medical equipment is for the exclusive use of the afflicted member, and is designed for prolonged use. Specific criteria and limitations apply.

**"Emergency"** means a sudden and unexpected symptom that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical attention would result in placing the health of the individual or others in serious jeopardy.

**"Enrollment period"** means the time period in which an individual may make an election of coverage or changes to coverage in effect.

**"Facility"** means any hospital, rehabilitation facility, skilled nursing facility, midwifery center, ambulatory surgical center, home health agency, infusion therapy entity, hospice program, durable medical equipment vendor, radiology facility, dialysis facility, or laboratory which is duly licensed under the laws of the state of operation, Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines.

**"Health benefit plans"** means the self-insured Plans by the State of Oklahoma for the purpose of providing health benefits to eligible members and may include such other benefits as may be determined by the Board. Such benefits shall be provided on a coinsurance basis, the insured to pay a proportion of the cost of such benefits.

**"Health information"** means any information, whether oral or recorded in any form or medium: (1) that relates to the past, present or future physical or mental condition of a member; the provision of health care to a member; or the past, present or future payment for the provision of health care to a member; and (2) that identifies the member or with respect to which there is a reasonable basis to believe the information can be used to identify the member.

**"Home health care"** means a plan of continued care of an insured person who is under the care of a provider who certifies that without the Home Health Care, confinement in a hospital or skilled nursing facility would be required. Specific criteria and limitations apply.

**"Hospice care"** means a concept of supportive care for terminally ill patients. Treatment focuses on the relief of pain and suffering associated with a terminal illness. Specific criteria and limitations apply.

**"Initial enrollment period"** means the first thirty [30] days following the employee's entry on duty date. A group initial enrollment period is defined as the thirty [30] days following the enrollment date of the participating entity.

**"Maintenance care"** means there is no measurable progress of goals achieved, no skilled care required, no measurable improvement in daily function or self-care, or no change in basic treatment or outcome.

**"Medically necessary"** means services or supplies which are provided for the diagnosis and treatment of the medical and/or mental health/substance abuse condition and complies with criteria adopted by the Insurance Board. Direct care and treatment are within standards of good medical practice within the community, and are appropriate and necessary for the symptoms, diagnosis or treatment of the condition. The services or supplies must be the most appropriate supply or level of service, which can safely be provided. For hospital stays, this means that inpatient acute care is necessary due to the intensity of services the member is receiving or the severity of the member's condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting. The services or supplies cannot be primarily for the convenience of the member, caregiver, or provider. The fact that services or supplies are medically necessary does not, in itself, assure that the services or supplies are covered by the Plan.

**"Members"** means all persons covered by the group insurance plans, including eligible current and qualified former employees of participating entities and their eligible covered dependents. Qualified former employees include those who have retired or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of service, or who have other coverage rights through COBRA or the Oklahoma Personnel Act.

**"Mental health and substance abuse"** means conditions including a mental or emotional disorder of any kind, organic or inorganic, and/or alcoholism and drug dependency.

**"Network provider"** means a practitioner who or facility that is duly licensed under the laws of the state in which the "Network Provider" operates and/or is accredited by a nationally recognized accrediting organization approved by state or federal guidelines, and has entered into a contract with the Board to accept scheduled reimbursement for covered health care services and supplies provided to members.

**"Open enrollment period"** means a limited period of time as approved by either the Board or the Legislature in which a specified group of individuals are permitted to enroll.

**"Option period"** means the time set aside at least annually by the Board in which enrolled plan members may make changes to their enrollments. Eligible but not enrolled employees may also make application for enrollment during this time. Enrollment is subject to approval by the Board.

**"Other hospital services and supplies"** means services and supplies rendered by the hospital that are required for treatment, but not including room and board nor the professional services of any provider, nor any private duty, special or intensive nursing services, by whatever name called, regardless of whatever such services are rendered under the direction of the hospital or otherwise.

**"Participating entity"** means any employer or organization whose employees or members are eligible to be

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participants in any plan authorized by or through the Oklahoma State and Education Employees Group Insurance Act.

**"Pre-existing provision"** means a charge incurred while eligible for benefit coverage under the Health Benefit Plan which resulted from any injury or illness which was treated, diagnosed, or medication prescribed within a period of one hundred eighty [180] days prior to commencement of Health Benefit Plan benefit coverage.

**"Prosthetic appliance"** means an artificial appliance that replaces body parts that may be missing or defective as a result of surgical intervention, trauma, disease, or developmental anomaly. Said appliance must be medically necessary.

**"Provider"** means a physician or other practitioner who is duly licensed or certified under the laws of the state in which the Provider practices and is recognized by this Plan, to render health care services and/or supplies.

**"Skilled care"** means treatment or services provided by licensed medical personnel as prescribed by a provider. Treatment or services that could not be given safely or reasonably by a person who is not medically skilled and would need continuous supervision of the effectiveness of the treatment and progress of the condition. Specific criteria and limitations are applied.

### SUBCHAPTER 3. ADMINISTRATION OF PLANS

#### 360:10-3-3.5. Responsibility for premium payment

All premiums due, unless authorized below shall be remitted directly to the Board by the tenth of the month for which the payment is due. All checks, money orders, and cashier's checks shall be made payable to the Board. The full amount of the payment for the coverage selected by the individual must be remitted each month. All such remittances shall be the sole responsibility of the member, subject to final approval by the Board.

(1) **Participating entity premiums.** Each participating entity in the insurance plans offered through the State and Education Employees Group Insurance Act shall forward the employer and employee premiums to the Board no later than the tenth day of each month following the month of coverage. The first payroll deductions for insurance premiums of individuals paid bi-weekly will be withheld from the first pay period that extends into the month during which insurance coverage begins. It is ultimately the employing agency's responsibility to check and verify that premiums paid to the Board are a true and accurate accounting of the member's approved coverage selections. If premium for coverage selected by the employee differs from the amount deducted from the member's check, then the participating entity is responsible for payment to the Board for any deficiencies in premium for the member's coverage. Any shortage of premiums due and payable will result in suspension of benefits for Plan participants.

(2) **Approved leave without pay premiums.** An employee on approved Leave Without Pay shall remit the full amount each month for the coverage selected to the

Insurance Coordinator, who shall immediately remit to the Board with a completed Remittance Advice form. ~~Employees~~Except as protected by federal statute, employees on leave not remitting their payments in a timely manner shall have their coverage terminated at the end of the month for which last payment was received. If coverage is terminated for non-payment all coverage is terminated. Upon return to work, the employee may re-enroll. All Plan limitations apply and evidence of insurability is required to re-enroll in any life coverage and shall, upon return to work, be re-enrolled.

(A) Provided that if a State employee is on leave without pay due to an injury or illness arising out of the course of his employment, the employee may continue the insurance during the maximum period of time allowed by law, and the employing agency shall pay the entire employee premium.

(B) The maximum period in which premiums can be paid is twenty-four [24] months, beginning with the date the employee goes into the leave without pay and cannot be again resumed until the employee is physically on the job, full time for thirty [30] consecutive days. However, Education employees who are absent from employment because of election or appointment as a local, state or national education association officer can pay premiums for a period of eight [8] years.

(3) **Retirement member premiums.** Any State of Oklahoma retirement system establishing a withholding system for its retired employees shall forward the retirement contribution and employees' withholding to the Board by the tenth of the month following the month for which payment is due. This same time frame also applies to members receiving disability benefits.

(4) **Vested member premiums.** Until such time as monthly retirement benefits are payable for vested employees, premiums are due by the tenth of the month of coverage. When the member begins to receive benefits, all premiums due, in excess of the retirement system contributions, shall be paid by the member and deducted from the retirement check.

(5) **Premium in excess of benefit check.** If the premium to be paid is the same as or more than the retirement benefit, the member shall remit the entire amount due directly to the Board by the tenth of the month of coverage.

(6) **Continuation of coverage during suspension without pay.** An employee, while on suspension without pay, may continue his coverage. If the agency which has suspended the employee fails to pay the State share of premiums, the agency shall provide written notice to the Board that the employee has been given reasonable, written notice that the agency has failed to pay the State share and that such payments must be paid by the employee if the coverage is to remain in force and in effect. Coverage is limited to ninety [90] days following the date of suspension or the duration of the administrative appeals process, whichever is greater.

**360:10-3-4. Cancellation of coverage**

(a) **Cancellation of coverage due to non-payment of premium.** If payment is not received by the end of the month in which the payment is due, coverage shall be canceled effective the end of the month for which the last premium was received. The Board may reinstate coverage within sixty [60] days after the date the Board canceled coverage, if it is shown that the failure to pay premiums was not due to the member's negligence, subject to payment of any required premiums. The employee shall be notified in writing by the Board of cancellation of coverage.

(b) **Cancellation of coverage due to insufficient funds.** In the event the member's payment is returned or refused due to insufficient funds or closed account, coverage may be cancelled unless the check is returned due to no fault of the member.

(c) All coverage canceled. If coverage is canceled for either of the reasons listed above all coverage will be terminated. When the employee is eligible to re-enroll, all Plan limitations apply and evidence of insurability is required to enroll in any life coverage.

**360:10-3-20. Rights of eligible former employees to continue in the Group Health and Dental Insurance Program**

(a) Health and dental coverage may be elected or retained at the time of termination of employment from an employer who participates in that health or dental coverage, if the following conditions are met:

(1) The former employee either retires or has a vesting right with a State funded retirement plan, or has the requisite years of service with an employer participating in the Plan, Plan; and

(2) The election must be received by the Board no later than thirty [30] days after the date of termination of service.

(3) Group coverage must be continuous in order to waive the pre-existing conditions or dental limitations when retaining or electing coverage. Any elected coverage will be subject to pre-existing conditions or dental limitations if a corresponding group coverage was not in effect at the time of the election.

(b) If an eligible former employee does not elect coverage at the time of termination of employment, or subsequently drops the coverage that was elected:

(1) The coverage may not be reinstated at a later date, except as permitted for former State employees exercising insurance retention rights available through a reduction in force (RIF) severance agreement; and

(2) In such circumstances, all premium contributions by state retirement systems will be forfeit.

(c) A participating eligible former employee cannot add dependents to coverage after termination of employment, except as follows:

(1) During an Open Enrollment Period; or  
(2) If the dependent is newly acquired. New dependent[s] or additional dependent coverage must be added

within thirty [30] days after acquiring the new dependent[s]; or

(3) If the dependent has lost other group health or dental insurance coverage and notice has been given to the Board within thirty [30] days after the loss of the other coverage. In this situation, coverage will begin without penalty for pre-existing conditions or dental limitations.

(d) During an Option Period, covered former employees shall have the same rights as active employees with regard to selection of health and dental plans.

(e) If an eligible former employee has a spouse who is participating in the Program as an employee of a participating entity, the former employee may transfer his or her health and dental coverage to be dependent coverage under the spouse at any time, so long as the following conditions are met:

(1) Coverage must remain continuous; and  
(2) All eligible dependents must be insured unless they have other verifiable group coverage.

(3) The eligible former employee, at a later date, may transfer his or her insurance coverage from dependent status back to former employee status if coverage with the Program has remained continuous, and the former employer of the eligible former employee continues to participate in the Program.

(f) An individual who has retained health or dental coverage is returning to active employment for a participating entity and meets the eligible criteria for an active employee is entitled to transfer his present coverage to that employer. The employer shall also furnish the employee with basic life coverage, if available. Any amount of life coverage converted to retired, non-vested and vested member's life shall be suspended at that time, subject to reinstatement upon re-retirement. Dependent life which was suspended may be reinstated upon re-retirement in the same amount as before.

(g) An eligible former employee who has retained any coverage and is returning to work for a participating entity but does not meet the eligibility criteria for an active employee is not entitled to coverage through that employer.

(h) In the event an otherwise eligible former employee returns to active employment who did not retain health coverage upon termination of employment, he must meet the eligibility requirements of a new employee in order to obtain coverage through the employer. Such individuals must work for three years in order to qualify for retaining any benefits not previously elected upon ceasing active employment when they re-retire. This includes members who terminated from employers not participating in the Insurance Program when they originally ended employment.

**360:10-3-24. Dependents**

Eligible dependents may be enrolled by new employees with their coverage effective concurrently with the employee's coverage if the member has signed the Insurance Election Form requesting such coverage within the member's initial thirty [30] day enrollment period. Dependent coverage not elected at that time shall not become available until the next enrollment period. When one eligible dependent is covered, all eligible dependents must be covered for all elected coverage except

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dependent life coverage. The spouse or dependent may elect not to be covered when the spouse or dependent is covered by other verifiable group health, dental or vision coverage, or for religious beliefs. Dependent's benefits shall only be covered under one primary insured except in the case of dependent life. ~~When both spouses are covered as primary insureds, eligible dependents may be covered by either spouse, but not by both simultaneously, except in the case of dependent life.~~

(1) In order for an employee to obtain coverage at birth for his or her own newborn child, a completed Insurance Election Form and any appropriate premium for the month of birth must be furnished the Insurance Coordinator within thirty [30] days after the date of birth of the newborn. Claims may not be processed or paid for the newborn until the newborn has been properly enrolled in the Plan.

(2) If optional coverage is not selected until after the employee's effective date, but within the member's Initial thirty [30] day Enrollment Period, the optional coverage will be effective the first of the month following the date the optional coverage was selected.

(3) In the event a dependent is hospital confined on the day his health coverage would otherwise become effective, health coverage for that dependent is not effective until the day following his or her final discharge from the hospital.

(4) Eligible dependents who lose other group health and/or dental insurance coverage may be added to the equivalent health or dental coverage offered through the Board within thirty [30] days after the loss of other group insurance coverage without penalty for pre-existing conditions or dental limitations if those dependents have been continuously covered by other group insurance, or have been eligible for treatment at military or Indian health facilities. Notice and proof of the loss of other coverage and termination date of other coverage must be submitted within thirty [30] days after the loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the pre-existing condition exclusion or dental limitations, coverage under this Plan shall become effective on the first day of the month during which the insured actually lost previous coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first day of the month following notice of the loss of other coverage, and any break in coverage will result in the application of the pre-existing condition exclusion.

(5) Newly acquired dependents may be added if the election is made within thirty [30] days after the qualifying event, or during the annual enrollment period as established by the Board. Documentation proving the qualifying event may be required. The effective date of coverage will be the first day of the month following notification to the Board of the qualified event except for newborn or adopted dependent children.

(6) Provided all other eligibility requirements are satisfied, newly born or adopted eligible dependent children, eligible children for which guardianship has been newly

granted to the insured or the insured's spouse, or eligible children of which the insured has been newly granted physical custody pending adoption, guardianship, or other legal custody, may be covered from the first day they are placed in the insured's physical custody, only upon payment of the full monthly premium for that individual, not prorated, and only after written notice has been given to the Board within thirty [30] days after obtaining physical custody. Copies of all documents relating to the matter are also required.

(7) At the insured's option, coverage for eligible dependent children newly placed in the insured's physical custody may become effective on the first day of the second month following placement, if written notice is provided within thirty [30] days following placement, or at the next Option Period as established by the Board.

(8) If the spouse of a member is insured by this Plan as a dependent and such spouse has been ordered by a court to provide health insurance for his children, such children may be insured when they meet all requirements of and provide positive evidence in accordance with Board policy within thirty [30] days after the official filing date of the court order.

(9) In the absence of a court order indicating adoption, guardianship, legal separation or divorce, an insured may apply for coverage on other minor children living with the insured provided: (1) the insured submits a copy of his most recent federal income tax return showing the child was listed as the insured's dependent for income tax deduction purposes; and (2) if the last federal income tax form requested above does not list the child, the insured shall be required to provide an Declaration of Dependency form prescribed by the Plan; and (3) coverage, when approved, shall begin on the first day of the month following approval, and will never apply retroactively; and (4) all other applicable eligibility requirements must be satisfied; and (5) all necessary premiums have been paid. The Plan shall have the right to verify the dependent's status, to request copies of the insured's federal income tax returns from time to time, and to discontinue coverage for such dependents if they are found to be ineligible for any reason.

### **360:10-3-25. Termination of dependent coverage**

(a) **Waiting period of twelve [12] months.** If coverage is discontinued for dependents, the employee cannot reapply for the discontinued coverage for any dependents again for at least twelve (12) months. Reinstated coverage shall be subject to penalty for pre-existing conditions or dental limitations.

(b) **Loss of other group health, dental or life insurance coverage.** The twelve [12] month requirement does not apply when the dependent has lost other group health, dental and/or life insurance coverage and is seeking reinstatement pursuant to Rule 360:10-3-24(4).

(c) **Dependent reaches age nineteen (19). Coverage will be terminated for dependents reaching age nineteen (19) unless a certificate of student status has been received. If at a later date, a student status letter is received, the dependent may be**

reinstated the first of the month following the month of notification of student status.

**360:10-3-27. Continuation of coverage for survivors**

The surviving dependents of a deceased employee who was on active work status or authorized leave at time of death, or of a participating retiree, or any person who has elected to receive a vested benefit under the Oklahoma Public Employees Retirement system, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system may continue the health or dental benefits in force provided said dependents pay the full cost of such coverage and they were covered as eligible dependents at the time of such death. Such election must be made within sixty [60] days after death, and coverage must be continuous. ~~The eligibility for such benefits shall terminate for the surviving spouse when such spouse remarries or becomes eligible for another group health plan.~~ The eligibility for said benefits shall terminate for the surviving children when such children cease to qualify as dependents under the provisions of this plan. ~~Benefits for surviving spouse shall terminate at the time of death if the surviving spouse is presently insured with other group health insurance.~~

**SUBCHAPTER 5. COVERAGE AND LIMITATIONS**

**PART 3. HEALTH BENEFIT PLANS**

**360:10-5-20. Health plan limitations and exclusions**

For the health plans provided by the Board, there is no coverage for expenses incurred for or in connection with any of the items listed below:

- (1) Expenses incurred, within one hundred eighty [180] days following the effective date of any employee's or a dependent's coverage under the Plan, resulting from or in any way related to a bodily injury, sickness or condition for which the covered member received treatment or incurred expenses during the one hundred eighty [180] day period immediately preceding the effective date of their coverage. This paragraph shall not apply to any member continuously covered under a previous group health insurance plan, or eligible to use military medical facilities, or was eligible to use Indian health services medical facilities. The employee is responsible to furnish the Board with satisfactory written evidence of such other coverage or eligibility and its termination date.
- (2) Expenses incurred prior to the effective date of an individual's coverage, or for expenses incurred during a period of confinement which had its inception prior to the effective date of an individual's coverage hereunder.
- (3) Injury or any sickness which is covered under an "Extended Benefits" provision of the previous group health coverage, until such time as such individual has exhausted all extended benefits available thereunder.

- (4) Hospitalization or other medical treatment furnished to the insured or dependent after coverage has terminated.
- (5) Confinement to a facility unless approved by the Board or its designee.
- (6) Medical and surgical services and supplies which are in excess of the fee schedule for such service and supply.
- (7) Expenses to the extent that the insured person is reimbursed or is entitled to reimbursement; or is in any way indemnified for such expenses by or through any public program, State or Federal, or any such program of medical benefits sponsored and paid for by the Federal Government or any agency or subdivision thereof.
- (8) Bodily injury or illness arising out of or in the course of any employment not specifically excluded by 85 O.S. §2.1 or 2.6 (of the Workers' Compensation Act).
- (9) Any treatment or procedure considered experimental or investigational. This restriction will also apply to any facility, appliance, device, equipment or medication.
- (10) Medical and/or mental health treatment of any kind, including hospital care, medications, or any medical care or medical equipment which is excessive or where medical necessity has not been proven.
- (11) Medications available for purchase without a written prescription.
- (12) Medical care and supplies for which no charge is made or no payment would be requested if the insured individual did not have this coverage.
- (13) Complications from any non-covered or excluded treatments, items or procedures.
- (14) Any medication, device, or procedure, not FDA approved for general use or sale in the United States.
- (15) Surgical procedures or treatment performed for cosmetic or elective reasons unless such procedure is specifically included as a Covered Charge or is necessary as a result of an accident. Coverage must have been continuous from the date of the accident to the date of corrective surgery.
- (16) Dental expenses unless incurred as the result of an accidental bodily injury to natural teeth or gums while the coverage is in effect. Coverage must have been continuous from the date of the accident to the date of corrective surgery. Broken or lost artificial teeth, bridges or dentures, are not eligible.
- (17) Illness, injury, or death as a result of committing or attempting to commit an assault or felony, including participation in a riot or insurrection as an aggressor.
- (18) Intentionally self-inflicted injury, or for attempted suicide whether sane or insane except when the injury results from a physical or mental medical condition covered under the health plan.
- (19) Wrongful act or negligence of another when an employee or dependent has released the responsible party. However, this exclusion may be waived in individual cases, at the Plan's option, for good cause, or if circumstances are such that refusal to pay the claim would create

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an extreme financial hardship on the employee or dependent.

(20) All other conditions, services, procedures, treatments, expenses, items, and supplies excluded by the Board's Benefit Guidelines.

### PART 5. LIFE BENEFITS

#### 360:10-5-32. Optional dependent life coverage

~~(a) Active employees.~~ Active employees may select life insurance coverage for eligible dependents if the employee is enrolled in basic life. This coverage does not include Accidental Death or Dismemberment benefits. This benefit is available even if the dependent is a participating employee. This coverage is not available to new employees ~~over~~ age 65 or older or re-employed ex-employees ~~over~~ age 65 or older.

~~(b) Evidence of Insurability.~~ Evidence of Insurability may be required if the employee does not make application for dependent coverage within thirty [30] days following his date of employment. Premiums for dependent life coverage shall be paid by the employee.

~~(c) Dependents not qualifying.~~ Dependents not qualifying through Evidence of Insurability will have the lower benefit level if they were previously covered in the low benefit level. If this is the initial application, non-qualifying dependents will be excluded from coverage.

#### 360:10-5-34. Rights of retired and vested employees to continue life insurance coverage

(a) **Continuation of coverage.** Any person who retires or who has elected to receive a vested benefit under the provisions of the State of Oklahoma Retirement systems, or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State employees Disability Program, or the spouse or dependent of any such employee, may continue in force life benefits purchased prior to severance in a face amount of no less than one-fourth [1/4] ~~but no more than three-fourths~~ [3/4] of the basic life coverage amount in five thousand dollar [\$5,000.00] increments, and the full amount of any additional life insurance that was in effect prior to the date of retirement. Said individual shall pay actuarially determined cost of such coverage and shall make such election within thirty [30] days following the date of severance. Said election to continue coverage becomes effective on the first of the month following termination of active employment.

(b) **Decrease or termination of coverage.** Coverage may be decreased or terminated after severance from active employment, but shall not be increased or reinstated after severance, except as permitted by rule or statute.

(c) **Unavailability to retirees, vested or eligible non-vested members or dependents.** Accidental Death and Dismemberment and Loss of Sight Benefits are not available to retired, vested, or eligible non-vested members or dependents.

### PART 9. DENTAL BENEFITS, LIMITATIONS AND EXCLUSIONS

#### 360:10-5-61. Dental Limitations and exclusions

For the dental plans provided by the Board, there is no coverage for expenses incurred for or in connection with any of the item listed below:

(1) Dental care and supplies for which there are no charges made or no payment would be required if the insured individual did not have coverage.

(2) Charges incurred after the covered individual's benefit ends.

(3) Benefits in excess of \$250, plus the deductible amount for allowable charges for a covered individual during the first year of coverage if the plan is not elected within thirty [30] days of the initial eligibility date.

(4) Dental care or supplies which are furnished in a facility operated under the direction of or at the expense of the U.S. Government [or its Agency] or by a provider employed by such a facility.

(5) Dental care or supplies to the extent that they are payable under other provisions of the policy.

(6) Charges for any dental services and supplies which are in excess of the fee schedule for such services and supplies or for charges of more than the amount in the fee schedule, plus the Deductible Amount, which are incurred by any covered individual during the first twelve [12] months he is covered for this dental benefit if he does not become covered within the initial enrollment period. Covered dental expenses which are due to an injury sustained while insured are not subject to this exception.

(7) Adult orthodontics without a diagnosis of temporomandibular joint dysfunction.

(8) Cosmetic procedures.

(9) Medical expenses for the treatment of temporomandibular joint dysfunction.

(10) Medical services treating an oral condition.

(11) Dental care or supplies resulting from taking part in committing or attempting to commit an assault or felony.

(12) Dental care or supplies due to sickness or injury covered by Workers' Compensation, occupational disease law or similar laws.

(13) Dental care or supplies as a result of Act of War declared or undeclared, Insurrection, or release of nuclear energy.

(14) Expenses relating to an intentionally self-inflicted injury, except when the injury results from a physical or mental medical condition covered under the health plan.

(15) Charges for treatment of accidental injury to natural teeth or gums.

(16) All other conditions, services, procedures, treatments, expenses, items, and supplies excluded by the Board's Benefit Guidelines.

[OAR Docket #03-615; filed 4-9-03]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 15. THE DISABILITY PROGRAM

[OAR Docket #03-616]

RULEMAKING ACTION: PERMANENT final adoption
RULES: 360:15-1-18 [AMENDED]
GOVERNATORIAL APPROVAL: March 5, 2003
AUTHORITY: Oklahoma State and Education Employees Group Insurance Board 74 O.S., Sections 1332
DATES:
Comment Period: January 6, 2003
Public Hearing: January 6, 2003
Adoption: January 24, 2003
Submitted to Governor: January 24, 2003
Submitted to House: January 24, 2003
Submitted to Senate: January 24, 2003
Gubernatorial approval: March 5, 2003
Legislative approval: Failure of the Legislature to disapprove the rules resulted in approval on March 26, 2003
Final adoption: March 26, 2003
Effective: January 1, 2004
SUPERSEDED EMERGENCY ACTIONS: None
INCORPORATIONS BY REFERENCE: n/a
ANALYSIS: Changes to Chapter 15 conform rules to recent increases in benefit maximums.
CONTACT PERSON: Gary Goff, Attorney, Assistant Administrator, 405-717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2004:

360:15-1-18. Suspension or termination of benefits After notice and hearing according to the Oklahoma Administrative Procedures Act or these rules, disability benefits may be suspended or terminated for failure to: Disability benefits may be suspended or terminated. For failure to:

- (1) Fully cooperate with or implement the rehabilitation plan;
(2) Submit to examination by a physician selected by the Board;
(3) Supply recertification by a regular physician;
(4) Cooperate in the repayment of overpayments; or

(5) Otherwise comply with the requirements of this plan.

[OAR Docket #03-616; filed 4-9-03]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #03-724]

RULEMAKING ACTION: PERMANENT final adoption
RULES: Subchapter 11. Risk Management 377:3-11-1 [AMENDED] 377:3-11-2 [AMENDED] 377:3-11-3 [AMENDED] 377:3-11-5 [AMENDED] 377:3-11-9 [AMENDED] 377:3-11-10 [AMENDED] 377:3-11-11 [AMENDED]
AUTHORITY: Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).
DATES:
Comment period: March 2, 2002 through March 21, 2002
Public hearing: March 22, 2002
Adoption: April 12, 2002
Submitted to Governor: April 15, 2002
Submitted to House: April 15, 2002
Submitted to Senate: April 15, 2002
Gubernatorial approval: May 22, 2002
Legislative approval: Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003.
Final adoption: March 25, 2003
Effective: July 1, 2003
SUPERSEDED EMERGENCY ACTIONS N/A
INCORPORATIONS BY REFERENCE: N/A
ANALYSIS: Proposed rules are developed to establish a substance abuse testing program for new employees in safety sensitive job classification that are offered employment within the Office of Juvenile Affairs. OJA contractors are required to abide by rules for a drug-free workplace.
CONTACT PERSON: Robert Morey, (405)530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.

SUBCHAPTER 11. RISK MANAGEMENT

# Permanent Final Adoptions

## PART 1. DRUG POLICY

### 377:3-11-1. Purpose of policy

Use of alcohol or illegal drugs may jeopardize the safety of Office of Juvenile Affairs (OJA) employees, the juveniles for whom the Office of Juvenile Affairs is responsible, and the citizens of Oklahoma. Accordingly, it shall be the policy of the Office of Juvenile Affairs to maintain an alcohol and drug-free work environment for the employees and to test job applicants and employees for the use of alcohol and illegal drugs.

### 377:3-11-2. Definitions

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

"**Alcohol**" means ethyl alcohol or ethanol;

"**Employee**" means any person who works full-time, part-time, or on a temporary basis for OJA, including management staff;

"**Job Applicant**" means any person who has applied to be an employee of OJA;

"**Illegal Drugs**" means any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes.

"**OJA**" means the Office of Juvenile Affairs;

"**OSDH**" means the Oklahoma State Department of Health.

### 377:3-11-3. Rules for drug free workplace

(a) **Illegal drugs.** OJA employees are prohibited from using, possessing, manufacturing, transferring, selling, or attempting to transfer or sell illegal drugs.

(b) **Alcohol.** OJA employees are prohibited from using or being impaired by alcohol in any OJA workplace or in the course of any work-related duty.

(c) **Prescription drugs.** Use of a drug shall not constitute a violation of this policy if the drug has been prescribed by a licensed physician, osteopath, or dentist and is taken as prescribed for that employee or applicant.

(d) **Violations.** Any employee who violates this policy will be subject to discipline, up to and including discharge.

### 377:3-11-5. Substance screening

Drug and alcohol testing may be required for employees and job applicants under the following circumstances:

(1) **Job applicant testing.** Every job applicant who is conditionally offered employment in the following job families shall be tested:

(A) Juvenile justice specialist

(B) Juvenile specialist

(C) Police officer

(D) Recreational therapist

(E) Institutional safety & security coordinator

(F) Registered nurse

(G) Licensed practical nurse; and

(H) Nursing manager.

(2+) **Reasonable suspicion testing.** Any employee may be tested, at the request of the Executive Director or, if he is unavailable, the Deputy Director if a reasonable suspicion exists that the employee has violated this policy while on duty. A reasonable suspicion may be drawn from specific objective and articulate facts and reasonable inferences drawn from those facts in light of experience, and, among other things, may be based upon:

(A) Observable phenomena such as:

(i) The physical symptoms or manifestations of being under the influence of a drug or alcohol while at work or on duty;

(ii) The direct observation of drug or alcohol use while at work or on duty;

(B) A report of drug or alcohol use while at work or on duty provided by reasonable and credible sources and which has been independently corroborated;

(C) Evidence that an individual has tampered with a drug or alcohol test during his employment with OJA; or

(D) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs while on duty or while on any OJA premises or premises with which OJA has contracted services, or operating any OJA vehicle, machinery, or equipment.

(32) **Post-accident testing.** Any employee may be tested when the Employee Safety Officer-Director of Safety and Risk Management determines that has a reasonable suspicion exists that the employee or another person has sustained a work-related injury requiring immediate medical attention or property damage in excess of \$2000 has or that Office of Juvenile Affairs property has been damaged occurred as a direct result of the employee's use of drugs or alcohol, including damage to equipment, in an amount reasonably estimated at the time of the accident to exceed \$500.00.

(43) **Post-rehabilitation.** Any employee who has had a confirmed positive test or has participated in a drug or alcohol dependency treatment program as part of disciplinary action by OJA may be tested without prior notice for a period of up to two years, commencing with the employee's return to work.

### 377:3-11-9. Consequences of refusal

(a) **Employees.** Any employee who refuses testing under this policy shall be subject to discipline up to and including discharge from employment

(b) **Job applicants.** Any job applicant who has received a conditional offer of employment from OJA and who refused to undergo drug and alcohol testing will not be hired by OJA. Unreasonable delay in submitting to testing shall be deemed a refusal.

### 377:3-11-10. Consequences of positive test results

(a) Any positive test results shall be confirmed by gas chromatography, gas chromatography-mass spectroscopy, or an

equivalent scientifically accepted method of equal or greater accuracy as prescribed by the State Board of Health.

(b) Any employee who has a confirmed positive test result will be subject to discipline up to and including discharge from employment. Such an employee will also be referred to the Administrator of the Employee Assistance Program. After evaluation, the employee may be required to complete drug and alcohol education and/or treatment. Unsuccessful completion or refusal to participate will result in termination of employment.

(c) Any job applicant who has a confirmed positive test result will not be hired by OJA.

**377:3-11-11. Job applicant and employee rights**

(a) **Explanation of test results.**

(1) Any job applicant who has a confirmed positive test result shall have an opportunity to confidentially explain the result orally and in writing to the Director of Safety and Risk Management.

(2) Any employee who has a confirmed positive test result shall have an opportunity to confidentially explain the result orally and in writing to the ~~Employee Safety Officer~~ Director of Safety and Risk Management.

(b) **Confidentiality.** All information relating to employee drug testing will be treated with strict confidence. All records relating to drug testing will be kept separate from personnel files.

(c) **Information.** Test records shall be the property of OJA and, upon the request of the job applicant or employee tested, shall be made available for inspection and copying to the applicant or employee. OJA will not release such records to any person other than the job applicant, employee, or the employee's review officer, unless the job applicant or employee, in writing and following receipt of the test results, has expressly granted permission for OJA to release such records or pursuant to a valid court order.

(d) **Appeal.** Any employee disciplined pursuant to this policy shall have grievance and appeal rights as provided by the OJA Rules and by the Oklahoma Merit Protection Commission in accordance with the Oklahoma Personnel Act, Title 74, Section 840.1 eq seq.

*[OAR Docket #03-724; filed 4-22-03]*

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES  
CHAPTER 16. STANDARDS AND CRITERIA FOR COMMUNITY RESIDENTIAL CARE  
MENTAL HEALTH FACILITIES**

*[OAR Docket #03-683]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. General Provisions

- 450:16-1-2 [AMENDED]
- 450:16-1-5 [REVOKED]
- Subchapter 7. Critical Incidents
- 450:16-7-3 [AMENDED]
- Subchapter 13. Quality of Life
- 450:16-13-2 [AMENDED]
- 450:16-13-4 [AMENDED]
- 450:16-13-13 [AMENDED]
- 450:16-13-15 [AMENDED]
- 450:16-13-17 [AMENDED]
- 450:16-13-24 [AMENDED]
- 450:16-13-45 [AMENDED]
- 450:16-13-46 [AMENDED]
- 450:16-13-48.1 [AMENDED]
- Subchapter 15. Resident Rights
- 450:16-15-1 [AMENDED]
- 450:16-15-5 [AMENDED]
- Subchapter 17. Security and Disclosure of Resident Information
- 450:16-17-1 [AMENDED]
- 450:16-17-3 [REVOKED]
- 450:16-17-3.1 [NEW]
- 450:16-17-4 [AMENDED]
- Subchapter 21. Personnel, Staffing, and Training
- 450:16-21-1 [AMENDED]
- 450:16-21-2 [AMENDED]
- 450:16-21-5 [AMENDED]
- Subchapter 27. Behavior
- 450:16-27-3 [AMENDED]
- Subchapter 29. Enhanced Residential Care
- 450:16-29-1 [REVOKED]
- 450:16-29-3 [AMENDED]
- 450:16-29-6 [REVOKED]
- 450:16-29-7 [AMENDED]
- 450:16-29-8 [AMENDED]

**AUTHORITY:**

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101 and 3-315.

**DATES:**

**Comment period:**

January 2, 2003 through February 4, 2003

**Public hearing:**

February 5, 2003

**Adoption:**

February 14, 2003

**Submitted to Governor:**

February 20, 2003

**Submitted to House:**

February 20, 2003

**Submitted to Senate:**

February 20, 2003

**Gubernatorial approval:**

March 31, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 16, 2003.

**Final adoption:**

April 16, 2003

**Effective:**

July 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- Subchapter 17. Security and Disclosure of Resident Information
- 450:16-17-1 [AMENDED]
- 450:16-17-3 [REVOKED]
- 450:16-17-3.1 [NEW]

**Gubernatorial approval:**

February 27, 2003

**Register publication:**

20 Ok Reg 660

**Docket number:**

03-353

**INCORPORATIONS BY REFERENCE:**

N/A

# Permanent Final Adoptions

## ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 16 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, implement permanent rules addressing the federally mandated Health Insurance Portability and Accountability Act (HIPAA), clarify quality of life issues in residential care facilities and delete redundant or superfluous language and correct scrivener's errors.

## CONTACT PERSON:

Linda Winton, Policy Analyst and Agency Liaison Officer, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 450:16-1-2. Definitions

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

**"Abuse"** means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a resident by a caretaker responsible for the resident's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a caretaker responsible for providing these services to a resident.

**"ADL"** means activities of daily living.

**"Administrator"** means the person who is in charge of a community residential mental health care facility and who devotes at least one-third (1/3) of his or her full working time to on-the-job supervision of the community residential mental health care facility.

**"Adults who have a serious mental illness"** are persons eighteen (18) years of age or older who meet the following criteria:

(A) Currently or at any time during the past year have had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet criteria specified within DSM-IV with the exception of "V" codes, substance abuse disorders, and developmental disorders, unless they co-occur with another diagnosable serious mental illness; AND

(B) Based on a client assessment scale, has at least moderate to severe impairment in the following areas:

- (i) Feeling, mood and affect,
- (ii) Thinking,
- (iii) Family relationships,
- (iv) Interpersonal skills,
- (v) Role performance,
- (vi) Socio-legal, or

(vii) Self care/basic needs.

**"CMHC"** means community mental health center.

**"Corporal punishment"** means any physical punishment including, but not limited to punching, slapping, kicking, spanking, or whipping.

**"Critical incident"** means an occurrence or set of events inconsistent with the routine operation of the community residential mental health care facility, or the routine care of a resident. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to residents, staff and visitors; medication errors; residents that are absent without leave (AWOL); neglect or abuse of a resident; fire; unauthorized disclosure of information; damage to or theft of property belonging to a resident or the community residential mental health care facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

**"Continuity of care agreements"** means an agreement between the community residential mental health care facility and providers of critical and comprehensive community based behavioral health services, including but not limited to a provider of inpatient behavioral health care and a local community mental health center. Continuity of care agreements shall specify the responsibility of each entity related to assuring continuous and coordinated care on behalf of the residents.

**"Critical incident report summary"** means an ODMHSAS report summarizing critical incidents in categories which can be used to improve resident care.

**"Culturally normative"** means any process or activity which encourages behavior which is generally considered normal or age appropriate for the culture in which an individual lives.

**"Direct care staff"** means any staff member who, in the performance of his or her routine duties has contact with residents and is required to meet the training requirements for community residential mental health care staff as listed in the "Standards and Criteria for Community Mental Health Residential Facilities".

**"Enhanced residential care facility"** means a community residential mental health care facility meeting all statutory and regulatory requirements of the ODMHSAS and OSDH; and which additionally: (A) specifically serves only "Adults who have a serious mental illness;" who cannot be accommodated in a (non-enhanced) community residential mental health care facility; as demonstrated by two (2) prior failed placements; and (B) serves no more than sixteen (16) residents.

**"Grooming/hygiene supplies"** means soap, shampoo, toothpaste, toothbrushes, deodorant, combs, brushes, razors, shaving cream, tampons, and feminine sanitary napkins.

**"Health care services"** means services provided by health care professionals and includes, but is not limited to dentists, optometrists, and podiatrists.

**"ICIS"** see "Integrated Client Information System."

**"Integrated Client Information System"** or "ICIS" is a comprehensive management information system based on national standards for mental health and substance abuse

databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, client profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and clients that provide the ability to monitor the course of client services throughout the statewide ~~DMHSAS~~ ODMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, community residential mental health care facilities, prevention programs, and centers for the homeless which are operated or funded in part by ~~DMHSAS~~ ODMH-SAS.

**"Leisure time"** means those activities or tasks done for the enjoyment and renewal that the activity or task brings to the person which may contribute to the promotion of health and well-being, on an individual or group basis, including, but not limited to sports, crafts, music, dances and outings.

**"Maladaptive behavior"** means behavior which seriously impairs a resident's ability to achieve cultural norms, e.g., inability to follow house rules; behavior which is disruptive to other residents.

**"Medication administration technician course"** is an educational program from an institute of higher learning which has been reviewed and approved by the OSDH pursuant to 310:680-11-1 and affords the student a certificate of training in the administration of medication and measuring and documenting vital signs.

**"OSDH"** means Oklahoma State Department of Health.

**"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

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

**"OSDH"** means Oklahoma State Department of Health.

**"Performance improvement"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of patients and others. Synonyms, and near synonyms, include continuous performance improvement, continuous improvement, organization wide performance improvement, and total quality improvement.

**"Personal care"** means assistance with meals, dressing, movement, bathing, or other personal needs, or general supervision of the physical and mental well-being of a person who is currently unable to maintain a private, independent residence, or who has limited abilities in the managing of his or her person, whether or not a guardian has been appointed for such person.

**"PI"** means "Performance improvement," as defined in this Section.

**"Principal of normalization"** means the utilization of means which assist the resident in their ability to achieve behavior which is considered appropriate in the culture in which they live, while having the same privileges as others, receiving

services without being unnecessarily segregated and not being labeled unnecessarily or in a devaluing fashion.

**"Professional and other services"** includes but is not limited to medical and legal services; contacts with the Veterans Administration, banking services; contacts with Social Security Administration, and contacts with the Department of Human Services.

**"Qualified Service Agreement"** means a written, signed agreement between the ODMHSAS and facilities which contract with the ODMHSAS, which permits the transmittal of records and information regarding consumers as appropriate for the care and treatment of said consumers, and the exchange of information necessary for the diagnosis and treatment of a person between those signatory facilities directly involved in the treatment of a consumer without the individual's consent.

**"RCF"** means mental health residential care facility. (See "Residential Care Facility.")

**"Registered/licensed dietitian"** means a person who is registered as a dietitian by the American Dietetic Association and licensed by the Oklahoma Board of Medical Licensure and Supervision.

**"Resident"** means a person residing in a residential care facility certified by ODMHSAS.

**"Resident committee" or "Resident government"** means any established group within the facility comprised of residents, led by residents and meets regularly to address resident concerns to support the overall operations of the facility.

**"Residential care facility" or "RCF"** means any house, home, establishment or institution licensed pursuant to the provisions of the Oklahoma Residential Care Home Act (63 O.S., §§ 1-819 through 1-840), other than a hotel, fraternity or sorority house, or college, or university dormitory, is certified pursuant to 43 O.S. § 3-315 as a Community Residential Mental Health Facility which and offers or provides residential accommodations, and food service and supportive assistance to any of its residents, or houses any resident requiring supportive assistance. Said residents shall be that are ambulatory, essentially capable of managing their own affairs, and not routinely requiring nursing care or intermediate care.

**"Resocialization activities"** means all activities which encourage interaction and the development of communication, interpersonal, social and recreational skills, and can include client education.

**"Restraint"** refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of the individual's body.

**"Seclusion"** means the placement of an individual or individuals alone in a room or other area from which egress is prevented by a physical barrier.

**"Sentinel event"** is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events

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include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

**"Socialization activities"** means all activities which encourage interaction and the development of communication, interpersonal, social and recreational skills, and can include client education.

**"Special need (persons with)"** means any persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the ~~deaf/hearing impaired~~ deaf or hard of hearing, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

**"Supportive assistance"** means the service rendered to any person which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person. The term "supportive assistance" shall not be interpreted or applied so as to prohibit the participation of residents in housekeeping or meal preparation tasks as a part of the written treatment plan for the training, habilitation or rehabilitation of the resident prepared with the participation of the resident, the mental health or drug or alcohol services case manager assigned to the resident and the administrator of facility, or his or her designee. Supportive assistance shall not include medical service.

**"Volunteer"** means any individual providing direct services to residents, and who is not on the facility's payroll, but fulfills a defined role within the facility. This definition does not include special entertainment/visiting groups.

## 450:16-1-5. New standards [REVOKED]

~~As new standards become effective, all affected facilities shall comply with these standards within one hundred twenty (120) calendar days of the effective date for standards promulgated under regular rule making. For standards adopted under emergency rulemaking, affected facilities shall come into compliance within sixty (60) calendar days of notice by ODMHSAS of the emergency rule's approval by the Governor.~~

## SUBCHAPTER 7. CRITICAL INCIDENTS

### 450:16-7-3. Critical incidents, reporting of

- The RCF shall report the following critical incidents to ODMHSAS.
- Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring

hospitalization or immediate off-site medical attention shall be delivered via fax or mail to ODMHSAS Provider Certification within twenty-four (24) hours of the incident being documented.

(c) Critical incidents involving allegations constituting a sentinel event or resident abuse shall be reported to ODMHSAS immediately via telephone or fax, but not less than twenty-four (24) hours of the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours.

(d) Compliance with 450:16-7-3 shall be determined by a review of critical incident reports at the RCF and those submitted to ODMHSAS.

## SUBCHAPTER 13. QUALITY OF LIFE

### 450:16-13-2. Nutrition

(a) To insure proper nutrition, meals must be well balanced and, if required by OSDH, approved by a registered/licensed dietician-dietitian.

(b) Compliance with 450:16-13-2 shall be determined by a review of documentation on staff training by dietician in menu substitutions if facilities provide special diets; review of menu with documentation of dietician's approval; observation of at least one (1) meal; resident interviews; and review of OSDH inspection reports

### 450:16-13-4. Between-meal snack

(a) Residents must receive between-meal snacks at least one (1) time per day, unless contraindicated due to a special diet approved by a registered/licensed dietician-dietitian.

(b) Compliance with 450:16-13-4 shall be determined by resident, staff and CMHC staff interviews; on-site observation; and a review of activity/meal activity and meal schedule.

### 450:16-13-13. Training in hygiene issues

(a) Hygiene issues and activities of daily living (ADLs) shall be addressed in the activities provided to residents a minimum of five (5) days per week.

(b) Compliance with 450:16-13-13 shall be determined by on-site observation; resident, staff, and CMHC staff interviews; and RCF documentation such as posted activities schedules.

### 450:16-13-15. Frequency of activities

(a) ~~Recreation/socialization~~ Recreation and socialization activities shall be provided by the RCF to residents a minimum of three (3) times per week, excluding exercise and ADLs, ADL on separate days, totaling six (6) hours or more per week.

(b) Compliance with 450:16-13-15 shall be determined by on-site observation; resident, staff, and CMHC staff interviews; and RCF documentation such as calendar of events.

**450:16-13-17. Variety of activities**

- (a) To insure variety, the RCF shall provide a minimum of three (3) different activities per week, exclusive of ~~ADL's~~ ADL and exercise.
- (b) Compliance with 450:16-13-17 shall be determined by on-site observation; resident, staff, and CMHC staff interviews; and RCF documentation such as calendar of events and residents' council minutes.

**450:16-13-24. Activities of daily living**

- (a) Residents shall be individually assisted and instructed regarding activities of daily living (~~ADL's~~) a minimum of five (5) days per week.
- (b) Compliance with 450:16-13-24 shall be determined by on-site observation; resident, staff, and CMHC staff interviews; and RCF documentation such as calendar of events.

**450:16-13-45. Health education**

- (a) The RCF shall provide, or arrange for instruction, to residents on at least a quarterly basis regarding early warning signs of diseases to better educate residents in the identification of possible health problems.
- (b) The RCF shall document the dates, topic, attendees, and the speaker(s) or trainer(s) of the instruction.
- (c) Compliance with 450:16-13-45 shall be determined by resident, staff, and appropriate CMHC staff interviews; and a review of in-house documentation.

**450:16-13-46. Mental health education**

- (a) The RCF shall provide, or arrange for instruction to residents, on at least a quarterly basis regarding psychiatric illnesses and medication to enable the resident to understand his or her illness.
- (b) The RCF shall document the dates, topic, attendees, and the speaker(s) or trainer(s) of the instruction.
- (c) Compliance with 450:16-13-46 shall be determined by resident, staff, and appropriate CMHC staff interviews; and a review of in-house documentation.

**450:16-13-48.1. Medication, administration**

- (a) ~~Medications shall be administered only by~~ RCF staff persons who have successfully completed an approved course in medication administration technician training shall administer medications.
- (b) Compliance with 450:16-13-48.1 shall be determined by staff and resident interviews, a review of OSDH site inspection reports; ~~staff and resident interviews; and~~ a review of the RCF's medication administration documentation and personnel records.

**450:16-15-1. Resident rights**

- (a) All residents shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged by due process of law by a court of competent jurisdiction. Each facility certified by or under contract with ODMHSAS ~~providing inpatient mental health or substance abuse services~~ shall insure clients have the rights specified as follows.
  - (1) All residents have the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.
  - (2) All residents have the right to a safe, sanitary, and humane living environment.
  - (3) All residents have the right to a humane psychological environment protecting them from harm, abuse, and neglect.
  - (4) Each resident has the right to an environment which provides reasonable privacy, promotes personal dignity, and provides opportunity for the client to improve his or her functioning.
  - (5) Each resident has the right to receive treatment services suited to his or her condition and needs for treatment without regard to his or her race, religion, sex, ethnic origin, age, degree of disability, handicapping condition, legal status, or ability to pay for the services.
  - (6) Each resident, on admission, has the absolute right to communicate his or her change of address with a relative, friend, clergy, or attorney, by telephone or mail, ~~at the expense of the facility if the resident is indigent.~~
  - (7) Each resident shall have and retain the right to confidential communication with an attorney, personal physician, or clergy.
  - (8) Each resident has the right to uncensored, private communications including, but not limited to, letters, telephone calls, and personal visits. Copies of any personal letter, sent or received, by a resident shall not be kept in his or her clinical record.
  - (9) No resident shall ever be neglected or sexually, physically, verbally, or otherwise abused.
  - (10) ~~Each resident has the right to be treated in the least restrictive environment (level of care), and to have the maximum freedom of movement consistent with the clinical condition and legal status of the resident.~~
  - (11) Each resident has the right to easy access to his or her personal funds on deposit with the facility, and shall be entitled to an accounting for said funds. A limitation on access to such funds may be made when it is determined, and documented, as essential to prevent the resident from unreasonably and significantly dissipating their assets.
  - (12) Each resident has the right to have his or her own clothing and personal possessions. This right may be forfeited, or limited, only if the personal property is determined to be potentially dangerous to the client, or others, or if the property is determined to be functionally unsafe.
  - (13) Each resident shall have the right to practice ~~their~~ his or her own religious beliefs, and afforded the opportunity for religious worship. No client shall ever be coerced

**SUBCHAPTER 15. RESIDENT RIGHTS**

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into engaging in, or refraining from, any personal religious activity, practice, or belief.

~~(14) Each resident has the right to be provided with prompt, competent, appropriate treatment services and an individualized treatment (service) plan.~~

~~(A) The resident shall be afforded the opportunity to participate in his or her treatment plan.~~

~~(B) The resident may consent, or refuse to consent, to the proposed treatment.~~

~~(C) The resident's right to consent, or refuse to consent, may be abridged for those residents adjudged incapacitated by a court of competent jurisdiction, and in emergency situations where the resident, or others, are in imminent danger.~~

~~(D) When the client permits, the client's family or significant others shall be involved in the treatment and treatment planning.~~

~~(15)13~~ The records of each resident shall be treated in a confidential manner.

~~(16)14~~ Each resident has the right to refuse to participate in any research project or medical experiment without informed consent of the resident, as defined by law. A refusal to participate shall not affect the services available to the resident.

~~(17)15~~ A resident may voluntarily participate in work therapy, and shall be paid just compensation for such participation. However, each resident is responsible for personal care and housekeeping tasks without compensation.

~~(18)16~~ ~~A-The community residential mental health facility shall provide residents who are resident being discharged leaving at the request of the community residential mental health facility shall have plans for outpatient treatment, sufficient medication, suitable clothing for the reason, housing information and referral; and, if the resident permits, family or significant others' involvement in the discharge plan all funds and property belonging to him or her at the time of his or her departure.~~

~~(19)17~~ Each resident shall have the right to establish and to participate in a client-resident committee; or client-resident government, by ward, unit, any other administrative client unit, or facility wide.

~~(20) Each resident has the right to request the opinion of an outside medical or psychiatric consultant, at the expense of the resident; or the right to an internal facility consultation, at no cost to the resident.~~

~~(21)18~~ Each resident has the right to assert grievances with respect to any alleged infringement of these stated rights of residents, or any other subsequently statutorily granted rights.

~~(22)19~~ No resident shall ever be retaliated against, or subject to, any adverse conditions or treatment services solely or partially because of having asserted his or her rights as aforesaid in this section.

(b) Each affected facility shall have written policy and implementing procedures, and shall provide documented staff training to insure the implementation of each and every resident right stated in this section.

(c) Each affected facility shall have written policy and implementing procedures to insure each resident enjoys, and has explained to him or her, these rights; and these rights are visibly posted in both resident and public areas of the facility.

(d) The ODMHSAS Advocate ~~General Office of Consumer Advocacy~~, in any investigation or monitoring regarding client rights shall have access to clients, RCF records and RCF staff as set forth in OAC 450:15-7-3(b).

(e) Compliance with 450:16-15-1 shall be determined by a review of facility policy and procedures; posted notices of resident rights; interviews with staff and residents; review of grievances by residents or others; and any other supporting facility documentation, such as written statements by the residents that rights had been read to them and they understood.

### 450:16-15-5. Resident's grievance policy

(a) Each RCF shall have a written ~~Resident's Grievance Policy~~ grievance policy and procedure providing for, but not limited to, the following:

(1) Written notice of the procedure provided to the resident; and, if involved with the resident, to family members or significant others.

(2) Time frames for the grievance policy's procedures which allow for resolution within ~~thirty (30)~~ fourteen (14) days.

(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authorized to make decisions for resolution of the grievance. In the instance where the decision maker is the subject of a grievance, decision making authority shall be delegated.

(4) Procedure by which a notice is provided to the resident advising that he or she has a right to make a complaint to the ODMHSAS Office of Consumer Advocacy an individual may appeal the outcome.

(5) Mechanism to monitor the grievance process and improve performance based on outcomes.

(6) Annual review of the grievance policy and its implementing procedures, with revisions as needed to improve.

(b) Compliance with 450:16-15-5 shall be determined by:

(1) a review of the RCF's grievance policy and implementing procedures;

(2) posted notices of client rights;

(3) interviews with staff and residents;

(4) review of the RCF's records of grievances filed by residents and/or family and significant others; and

(5) any other supporting facility documentation.

## SUBCHAPTER 17. SECURITY AND DISCLOSURE OF RESIDENT INFORMATION

### 450:16-17-1. Disclosure of resident information

(a) Confidentiality of information concerning a resident is applicable throughout the RCF.

(1) Staff shall be made aware of conditions for release of information in compliance with state and federal laws and regulations.

(2) The RCF's written policies and procedures shall describe the conditions under which information on applicants or residents may be disclosed and the procedure for releasing such information (~~including the ODMHSAS Qualified Service Agreement~~). These conditions and procedures shall be in compliance with state and federal laws and regulations, which include, but are not limited to, 43A O.S. §§1-109, 3-422 and 3-423; 63 O.S. §1-502.2, and (U.S.)-42 C.F.R., Part 2, and 45 C.F.R. §§160.101 et seq.

(b) Compliance with 450:16-17-1 shall be determined by a review of the RCF's written policies and procedures and documented staff training.

**450:16-17-3. Consent for disclosure [REVOKED]**

~~(a) Release of residents' information, verbal or written, shall be completed only upon the written consent of the resident or legal guardian, or executor; or on the order of a court of competent jurisdiction. The disclosure of resident information is made as follows:~~

- ~~(1) The name of the RCF which is to make the disclosure;~~
- ~~(2) The name or title of the person or organization to which disclosure is to be made;~~
- ~~(3) The name of the resident;~~
- ~~(4) The purpose or need for the disclosure;~~
- ~~(5) The extent or nature of information to be disclosed;~~
- ~~(6) A statement that the consent is subject to revocation at any time except to the extent action has already been taken in reliance thereon, and a specification of the date, event, or condition upon which it will expire without revocation;~~
- ~~(7) The date on which the consent to disclose is signed;~~
- ~~(8) The signature of the resident, or when required, the signature of a person legally authorized; and when possible, a written statement from the resident indicating understanding of his or her consent;~~
- ~~(9) A written statement addressing prohibition of re-disclosure shall be stamped upon each page of released information, which states: "This information has been disclosed to you from records whose confidentiality is protected by federal law. You are prohibited from making any further disclosure of it without the specific written consent of the person to whom it pertains. A general authorization for the release of information is NOT sufficient. This information is to be destroyed upon fulfillment of the stated purpose." and~~
- ~~(10) Contain, in bold face type, the following statement: "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)." [63 O.S. § 1-1502(B)]~~

~~(b) EXCEPTIONS: When necessary to protect the life, or safety of the resident; or where the resident's name and location must be disclosed in order to report, as required by statute, child abuse or abuse of elderly or incapacitated adults.~~

~~(c) Compliance with 450:16-17-3 shall be determined by a review of resident records; consent for disclosure forms; and RCF policies and procedures.~~

**450:16-17-3.1. Confidentiality of mental health and drug or alcohol abuse treatment information**

(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless a state or federal law exception applies.

(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:

- (1) an acknowledgment that all mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;
- (2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;
- (3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;
- (4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;
- (5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws; and
- (6) a procedure by which to notify a consumer of his or her right to confidentiality.

(c) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:

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- (1) the name of the person or program permitted to make the disclosure;
- (2) the name or title of the person or the name of the organization to which disclosure is to be made;
- (3) the name of the consumer whose records are to be released;
- (4) a description of the information to be disclosed;
- (5) the specific reason for the disclosure;
- (6) the signature of the consumer or the consumer's legally authorized representative;
- (7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;
- (8) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;
- (9) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;
- (10) a confidentiality notice which complies with state and federal law; and
- (11) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)."

(d) Compliance with 450:16-17-3.1 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.

### **450:16-17-4. Validity of written consent**

- (a) A resident's written consent for the release of information shall be considered valid only if the following conditions have been met and documented in writing:
  - (1) The resident is informed, in a manner that assures his or her understanding, of the specific type(s) of information that has been requested, and the period of time for which the information has been requested.
  - (2) The resident is informed of the purpose or need for the information.
  - (3) Services are not contingent upon the resident's decision concerning authorization for the release of information; and
  - (4) The resident gives his or her consent freely and voluntarily.
- (b) Compliance with 450:16-17-4 shall be determined by a review of the consent for disclosure; and resident interviews.

## **SUBCHAPTER 21. PERSONNEL, STAFFING AND TRAINING**

### **450:16-21-1. Staff orientation**

- (a) The RCF shall provide new direct care staff with an orientation within ninety (90) days of hire which, at least, consists of instructions on:
  - (1) Orientation of RCF policies and procedures to include ~~Resident's Rights~~ residents' rights, confidentiality, and abuse policy.
  - (2) Orientation of ODMHSAS standards and criteria for RCF.
  - (3) Techniques and philosophies which addresses appropriate non-violent intervention and potentially aggressive interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention. This training must be one-hour in length, at a minimum.
- (b) Compliance with 450:16-21-1 shall be determined by a review of staff personnel files; and orientation procedures and materials.

### **450:16-21-2. Direct care staff, minimum age**

- (a) All RCF direct care staff in the RCF shall be at least eighteen (18) years old.
- (b) Compliance with 450:16-21-2 shall be determined by a review of applications for employment; and copy of employee's driver's license or birth certificate.

### **450:16-21-5. Residential care staff training requirements, direct care staff**

- (a) All RCF direct care staff ~~of the RCF~~ shall annually receive, and have documented the dates attended and subject matter taught, for the following:
  - (1) Review of RCF policies and procedures to include, ~~Resident's~~ residents' rights, confidentiality, and abuse policy.
  - (2) Review of ODMHSAS standards and criteria for RCFs;
  - (3) Techniques and philosophies ~~addresses~~ addressing appropriate non-violent intervention and potentially aggressive interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention. This training must be one-hour in length, at a minimum.
- (b) All direct care staff of the RCF shall annually receive twelve (12) hours of in-service or other training.
- (c) Compliance with 450:16-21-5 shall be determined by a review of the staff training or personnel files.

## **SUBCHAPTER 27. BEHAVIOR**

### **450:16-27-3. Seclusion and restraints**

- (a) Seclusion or chemical, mechanical or physical restraint of residents is prohibited.
- (b) Compliance with 450:16-27-3 shall be determined by a review of RCF documentation of prohibition; resident

interviews; staff interviews; and appropriate CMHC staff interviews.

**SUBCHAPTER 29. ENHANCED RESIDENTIAL CARE**

**450:16-29-1. Maximum number of beds [REVOKED]**

~~(a) The Enhanced RCF shall have a maximum of sixteen (16) beds, to ensure the RCF does not exceed census congruent with standards applicable to enhanced level of care.~~

~~(b) Compliance with 450:16-29-1 shall be determined by observation during the site visit; and a review of documentation referring to number of beds.~~

**450:16-29-3. Required consultants**

(a) The Enhanced RCF shall have signed written consultation agreements with:

- (1) A registered/licensed ~~dietician~~ dietitian; and
- (2) A licensed physician.

(b) These consultation agreements shall be on file and accessible to the ODMHSAS reviewers at the time of on-site visit. If there is reason to believe that one or both of the agreements are, or may be, not in effect, the reviewers shall be able to contact the listed consultant(s) to verify the status of their agreement.

(c) The Enhanced RCF shall update these consultant agreements annually to assist in the verification of current status.

(d) Compliance with 450:16-29-3 shall be determined by a review of RCF ~~documentation~~ consultation agreements.

**450:16-29-6. Admission criteria, prior failed placements [REVOKED]**

~~(a) The Enhanced RCF shall serve individuals who cannot be accommodated in a RCF as demonstrated by at least two (2) prior failed RCF placement attempts within two (2) years resulting in hospitalization.~~

~~(b) Compliance with 450:16-29-6 shall be determined by a review of RCF documentation of failed admissions (i.e., client records showing prior failed placements, ICIS client data cores, etc.).~~

**450:16-29-7. Written admission Admission criteria for Enhanced RCFs**

(a) ~~With the input of, and approval by, the service area community mental health center, Enhanced RCF shall have written admission criteria for the service area in which the Enhanced RCF is located.~~ The Enhanced RCF shall have written admission criteria.

(1) This written admission criteria shall be on file and accessible at the Enhanced RCF to ODMHSAS staff.

(2) ~~There shall be documentation that the CMHC was involved in, and approved of, the formulation of admission criteria.~~ The criteria shall indicate the Enhanced RCF serves individuals who cannot be accommodated in a RCF

as demonstrated by at least two (2) prior failed RCF placement attempts within two (2) years resulting in hospitalization or based on the judgment of the individual's treatment team from the referring CMHC or the ODMHSAS inpatient unit that a RCF placement would not provide the structured environment needed by the consumer at this time.

(b) Compliance with 450:16-29-7 shall be determined by a review of ~~documentation, i.e.,~~ the written admission criteria, resident interviews, client records showing prior failed placements, ICIS client data cores, correspondence or minutes of meetings between the RCF and CMHC, and CMHC staff interviews.

**450:16-29-8. Enhanced RCF activities**

(a) Enhanced RCF activities shall include a minimum of three (3) separate weekly scheduled, structured and supervised group activities ~~shall be~~ conducted on two (2) different days of each week. These group activities shall total at least twelve (12) hours of activity per week, which shall include at least two (2) activities away from the RCF.

- (1) Group activities shall be accessible to all residents.
- (2) Activities shall be in addition to exercise and daily living skills training.
- (3) Activities shall be age appropriate.

(b) Compliance with 450:16-29-8 shall be determined by a review of ~~documentation (i.e.,~~ activities calendar, residents' files), and interviews with residents, staff and CMHC staff.

[OAR Docket #03-683; filed 4-21-03]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES  
CHAPTER 17. STANDARDS AND CRITERIA FOR COMMUNITY MENTAL HEALTH SERVICES CENTERS**

[OAR Docket #03-684]

**RULEMAKING ACTION:**  
PERMANENT final adoption

- RULES:**
- Subchapter 1. General Provisions
    - 450:17-1-1 [AMENDED]
    - 450:17-1-2 [AMENDED]
    - 450:17-1-5 [REVOKED]
    - 450:17-1-6 [AMENDED]
  - Subchapter 3. Required Services
    - Part 1. Required Services
      - 450:17-3-3 [AMENDED]
      - 450:17-3-21 [AMENDED]
      - 450:17-3-22 [AMENDED]
    - Part 5. Emergency Services
      - 450:17-3-41 [AMENDED]
      - 450:17-3-42 [AMENDED]
      - 450:17-3-43 [AMENDED]
    - Part 7. Outpatient Counseling Services
      - 450:17-3-62 [AMENDED]
    - Part 9. Medication Clinic Services
      - 450:17-3-81 [AMENDED]
      - 450:17-3-82 [AMENDED]

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450:17-3-83 [AMENDED]  
Part 11. Case Management  
450:17-3-101 [AMENDED]  
450:17-3-101.1 [AMENDED]  
450:17-3-103 [AMENDED]  
450:17-3-106 [AMENDED]  
Part 13. ODMHSAS Operated Psychiatric Hospitals  
450:17-3-122 [AMENDED]  
Part 15. Adult Day Programs  
450:17-3-141 [AMENDED]  
450:17-3-142 [AMENDED]  
450:17-3-144 [AMENDED]  
450:17-3-144.1 [AMENDED]  
Part 17. Services to Homeless Individuals  
450:17-3-161 [AMENDED]  
Subchapter 5. Optional Services  
Part 5. Homebased Services to Children and Adolescents  
450:17-5-22 [AMENDED]  
Part 9. Vocational Employment Services  
450:17-5-45 [AMENDED]  
Part 11. Community Living Programs  
450:17-5-56 [AMENDED]  
450:17-5-67 [AMENDED]  
450:17-5-67.1 [AMENDED]  
450:17-5-67.2 [AMENDED]  
450:17-5-67.3 [AMENDED]  
Part 13. Crisis Stabilization  
450:17-5-81 [NEW]  
Part 15. Inpatient Services  
450:17-5-100 [AMENDED]  
Part 19. Program for Assertive Community Treatment  
450:17-5-127 [NEW]  
Subchapter 7. Facility Clinical Records  
450:17-7-3 [AMENDED]  
450:17-7-4 [AMENDED]  
450:17-7-5 [AMENDED]  
450:17-7-6 [AMENDED]  
450:17-7-7 [AMENDED]  
450:17-7-8 [AMENDED]  
450:17-7-9 [AMENDED]  
450:17-7-10 [AMENDED]  
Subchapter 9. Consumer Records and Confidentiality  
450:17-9-1.1 [NEW]  
Subchapter 11. Consumer Rights  
450:17-11-1 [AMENDED]  
450:17-11-3 [AMENDED]  
450:17-11-4 [AMENDED]  
Subchapter 13. Organizational Management  
450:17-13-1 [AMENDED]  
450:17-13-2 [AMENDED]  
Subchapter 15. Performance Improvement and Quality Management  
450:17-15-1.1 [AMENDED]  
Subchapter 19. Human Resources  
450:17-19-3 [AMENDED]  
Subchapter 21. Staff Development and Training  
450:17-21-1 [AMENDED]  
450:17-21-2 [AMENDED]  
450:17-21-3 [AMENDED]  
450:17-21-4 [NEW]  
450:17-21-5 [NEW]  
Subchapter 23. Facility Environment  
450:17-23-1 [AMENDED]  
Subchapter 27. Special Populations  
450:17-27-1 [AMENDED]

## **AUTHORITY:**

43A O.S. §§ 2-101, 3-306, 3-306.1, 3-318 and 3-319; Board of Mental Health and Substance Abuse Services.

## **DATES:**

### **Comment period:**

January 2, 2003 through February 4, 2003

### **Public hearing:**

February 5, 2003

### **Adoption:**

February 14, 2003

## **Submitted to Governor:**

February 20, 2003

## **Submitted to House:**

February 20, 2003

## **Submitted to Senate:**

February 20, 2003

## **Gubernatorial approval:**

March 31, 2003

## **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 16, 2003.

## **Final adoption:**

April 16, 2003

## **Effective:**

July 1, 2003

## **SUPERSEDED EMERGENCY ACTIONS:**

### **Superseded rules:**

Subchapter 3. Required Services

Part. 11 Case Management

450:17-3-106 [AMENDED]

Subchapter 5. Optional Services

Part 19. Program for Assertive Community Treatment

450:17-5-127 [NEW]

### **Gubernatorial approval:**

February 27, 2003

### **Register Publication:**

20 Ok Reg 662

### **Docket number:**

03-355

### **Superseded rules:**

Subchapter 9. Consumer Records and Confidentiality

450:17-9-1.1 [NEW]

### **Gubernatorial approval:**

February 27, 2003

### **Register Publication:**

20 Ok Reg 668

### **Docket number:**

03-354

## **INCORPORATIONS BY REFERENCE:**

N/A

## **ANALYSIS:**

In accordance with the Administrative Procedures Act, these rule revisions to Chapter 17 are part of the Department's review of Title 450. These amendments are intended to comply with statutory mandates, implement permanent rules to address the federally mandated Health Insurance Portability and Accountability Act (HIPAA), enhance service provision, delete redundant or superfluous language and correct scrivener's errors.

## **CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **450:17-1-1. Purpose**

(a) This chapter sets forth the Standards and Criteria used in the certification of ~~CMHCs (43A §§ 3-306 and 3-317)~~ Community Mental Health Centers and implements 43A O.S. § 3-306.1, which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Community Mental Health Centers.

(b) The rules regarding ~~factors relating to~~ the certification ~~processes~~ process including, but not necessarily limited to, application ~~process~~, fees, ~~requirements for, levels of,~~ and administrative sanctions are found in ~~OAC the~~ Oklahoma Administrative Code, Title 450: Chapter 1, Subchapters 5 and 9.

**450:17-1-2. Definitions**

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a resident by a staff responsible for the resident's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a resident.

**"Adults who have a serious mental illness"** are persons eighteen (18) years of age or older who meet the following criteria:

- (A) Currently or at any time during the past year have had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet criteria specified within DSM-IV with the exception of "V" codes, substance abuse disorders, and developmental disorders, unless they co-occur with another diagnosable serious mental illness; ~~AND and~~
- (B) Based on a client assessment scale, has moderate impairment in at least four, severe impairment in two or extreme impairment in one of the following areas:
  - (i) Feeling, mood and affect;<sub>2</sub>
  - (ii) Thinking;<sub>2</sub>
  - (iii) Family relationships;<sub>2</sub>
  - (iv) Interpersonal skills;<sub>2</sub>
  - (v) Role performance;<sub>2</sub>
  - (vi) Socio-legal;<sub>2</sub> or
  - (vii) Self care and basic needs; ~~OR or~~
- (C) Has a duration of illness of at least one year and at least moderate impairment in two, or severe impairment in one of the following areas:
  - (i) Feeling, mood and affect;<sub>2</sub>
  - (ii) Thinking;<sub>2</sub>
  - (iii) Family relationships;<sub>2</sub>
  - (iv) Interpersonal skills;<sub>2</sub>
  - (v) Role performance;<sub>2</sub>
  - (vi) Socio-legal;<sub>2</sub> or
  - (vii) Self care and basic needs.

~~"Assistance in development of community and independent living skills" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., consumer education on topics such as hygiene, cooking, budgeting, meal planning, housecleaning and when clinically indicated,~~

~~side-by-side work with the consumer in a normalized setting and prevocational and vocational activities.~~

~~"Assistance in the development of socialization skills" means all activities which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.~~

**"Case management services"** means planned linkage, advocacy and referral assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a treatment plan developed with and approved by the consumer and qualified staff. "Children who have a serious emotional disturbance" are persons under eighteen (18) years of age who meet the following criteria:

- (A) Possess a diagnosable, serious disorder under DSM-IV such as pervasive developmental disorder, childhood schizophrenia, schizophrenia of adult-type manifesting in adolescence, conduct disorder, affective disorder, other disruptive behaviors, or other disorders with serious medical implications such as eating disorders, or persistent involvement with alcohol or drugs; ~~AND and~~
- (B) Based on a client assessment scale, has moderate impairment in at least four, severe impairment in two, or extreme impairment in one in the following areas:
  - (i) Feeling, mood and affect;<sub>2</sub>
  - (ii) Thinking;<sub>2</sub>
  - (iii) Substance use;<sub>2</sub>
  - (iv) Family relationships;<sub>2</sub>
  - (v) Interpersonal skills;<sub>2</sub>
  - (vi) Role performance;<sub>2</sub>
  - (vii) Socio-legal;<sub>2</sub>
  - (viii) Self care and basic needs;<sub>2</sub> or
  - (ix) Caregiver resources; ~~OR or~~
- (C) Has a duration of illness for at least one year and has a functioning level of moderate impairment in at least two, or severe impairment in one of the following areas:
  - (i) Feeling, mood and affect;<sub>2</sub>
  - (ii) Thinking;<sub>2</sub>
  - (iii) Family relationships;<sub>2</sub>
  - (iv) Interpersonal skills;<sub>2</sub>
  - (v) Role performance;<sub>2</sub>
  - (vi) Socio-legal;<sub>2</sub> or
  - (vii) Self care and basic needs.

~~"Client" See "Consumer."~~

**"Creating A Positive Environment" or "CAPE"** means a specific curriculum designed by ODMHSAS to train staff in verbal and non-verbal communication techniques in the management of selected and potentially problematic behaviors and to foster attitudes that promote the consumer's dignity and self-esteem in facility treatment settings.

**"Clinical privileging"** means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers

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within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

~~"CMHC" means community mental health center programmatically certified by and who are either operated by, or under contract with, ODMHSAS for the provision of services.~~

**"Community living programs"** means a range of rehabilitative housing options for persons not in crisis who need a special living arrangement and are broad enough to allow each consumer an opportunity to live in an atmosphere offering the degree of case management necessary while also providing incentives and encouragement for consumers to assume increasing responsibility for their lives and may include independent living training programs, supervised permanent supported apartments and housing, and family placement.

~~"Community mental health center" or "CMHC" means a facility providing screening, intake and referral; emergency services; outpatient counseling; medication clinic services; case management services; admitting to ODMHSAS operated psychiatric hospitals; adult day programs; and services to homeless individuals. The optional home based services to children and adolescents; day treatment services to children and adolescents; vocational employment services; community living programs; independent living training programs; crisis stabilization programs; inpatient services within the CMHC setting, and PACT services may be included offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.~~

**"Consumer"** means an individual, adult or child, who has applied for, is receiving or has received evaluation or treatment services (evaluation or treatment) from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

**"Consumer advocacy"** includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

**"Consumer committee" or "consumer government"** means any established group within the facility comprised of consumers, led by consumers and meets regularly to address consumer concerns to support the overall operations of the facility.

**"Crisis Intervention"** means an immediately available service to meet the psychological, physiological and environmental needs of individuals who are mentally ill.

**"Crisis stabilization"** means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, referral provided in a ODMHSAS certified facility having nursing and medical support available.

**"Critical incident"** means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

**"DSM IV"** means the Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth Edition~~, published by the American Psychiatric Association in 1994.

**"Day treatment"** is a structured, comprehensive program designed to improve or maintain consumers' ability to function in the community.

**"Dual diagnosis"** means a consumer who meets the following criteria:

(A) Meets the criteria for a Substance Abuse Services Consumer having one or more of the following DSM-IV Axis I primary, secondary or tertiary diagnoses:

(i) Psychoactive Substance Induced Disorders 291.0 through 291.8, 292.0 292.11, 292.12, 292.81, 292.82, 292.83, 292.89, 292.9, 303.00, 305.20 through 305.90;

(ii) Psychoactive Substance Use Disorders 303.90, 304.00 through 304.90, 305.00, and 305.20 through 305.90;

(iii) One or more of ICIS presenting problem codes 710 through 731 and 741 through 743; AND

(B) Has one or more of the following DSM-IV Axis I primary, secondary, or tertiary diagnoses:

(i) Schizophrenia 295.10, 295.20, 295.30, 295.60, 295.90;

(ii) Delusional (Paranoid) Disorder 297.1

(iii) Other Psychotic Disorders 295.40, 295.70, 297.3, 298.8, 298.9, 297.1, 297.3;

(iv) Mood Disorders 296.20 through 296.7.

**"Emergency assistance"** see crisis intervention.

**"Emergency detention"** means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

**"Emergency examination"** means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental

health professional to determine if emergency detention of the person is warranted.

**"FTE"** means an employee, or more than one, who work(s) the time equivalent to the number of hours per week, month or year of one (1) employee working full time.

**"Facility"** ~~see means~~ community mental health center.

**"Family support or education"** means all activities that educate and assist families to better cope with and understand mental illness; to include activity involving families in consumer treatment as appropriate and approved by the consumer.

**"Hard of Hearing impaired hearing"** is any degree of hearing loss which interferes with the individual's ability to communicate without some form of specialized accommodation which may include, but not be limited to: hearing aids, sign language interpreters, assistive listening devices, or communication through speech reading. The hearing loss of those individuals needing special services may range from mild, 25 to 45 decibels in the better functioning ear, to profound, 90 decibels or more.

**"Historical timeline"** means a method by which a specialized form is used to gather, organize and evaluate information about significant events in a consumer's life, experience with mental illness, and treatment history.

**"Homebased services to children and adolescents"** means intensive therapeutic services provided in the home to children for the purpose of reduction of psychiatric impairment and preventing removal of the child to a more restrictive setting for care. Services include a planned combination of procedures developed by a team of qualified mental health professionals, including a physician.

**"ICIS"** See "Integrated Client Information System."

**"Independent living skills, assistance in development of"** means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., consumer education on topics such as hygiene, cooking, budgeting, meal planning, housecleaning and when clinically indicated, side-by-side work with the consumer in a normalized setting and prevocational and vocational activities.

**"Integrated Client Information System" or "ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

**"Independent living training"** means a supervised place of temporary transitional residence for mental health consumers participating in an independent living training program before moving to a more independent living situation. These

facilities are intended for participation by mental health consumers who have recently been released from an institution, and who need short-term training and support before entering an independent living situation.

**"Job development services"** means strategies which market the CMHC rehabilitation services and assist employers in facilitating the successful employment of individuals with psychiatric disabilities. Marketing, in this context, is defined as an ongoing, continuous approach which enables the rehabilitation unit to identify employer needs, refocus resources and management structures as needed and improve services to consumers and employers which satisfy those needs for the purpose of job development services such as developing long-term relationships between the agency and employers which will lead to more and better job opportunities for persons with psychiatric disabilities.

**"Licensed mental health professional" or "LMHP"** means:

(A) a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology;

(B) a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

(C) a licensed clinical psychologist;

(D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;

(E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;

(F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;

(G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or

(H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.

**"Linkage with other community providers and resources"** **"Linkage"** refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

**"Medical resident"** means a physician who is a graduate of a school of medicine or osteopathy and who is receiving specialized training in a teaching hospital under physicians who are certified in that specialty.

**"Medication error"** means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

**"Ongoing services"** means those services necessary to maintain an individual in a specific job. This includes ongoing support services provided at or away from the work site for the purpose of ongoing services which commit the agency, staff and the individual to facilitate the provision of the components

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necessary for a consumer to maintain the employment which has been negotiated by the CMHC.

**"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

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

**"Outreach services"** means aggressive attempts to encourage active consumer involvement in mental health services for individuals not currently within the mental health system and individuals who have discontinued services but are still in need of treatment.

**"Performance Improvement"** or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

**"Permanent supported apartment or housing programs"** means a permanent residential program for mental health consumers in which the agency facilitates placement of, and provides intensive case management services to, individuals who reside in an apartment or house, either individually or shared. Staffs are not required on-site, but are on-call for residents. These facilities are intended for Mental Health consumers who desire and are evaluated as being capable of, living in a house or apartment without on-site supervision.

**"Persons with special needs"** means "Special needs" as defined in this Section.

**"PI"** means "Performance Improvement" as defined in this Section.

**"PACT"** means "Program for Assertive Community Treatment" as defined in this Section.

**"Program for Assertive Community Treatment"** or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

**"Progress notes"** mean a chronological written description of services provided to a consumer and documentation of the consumer's response related to the intervention plan.

**"Psychosocial evaluations"** are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

**"Psychosocial rehabilitation"** means a program focused around a clubhouse or other center offering services to members in the areas of socialization and recreation, vocation, residential and education. These services are directed toward helping members develop needed skills and provide environmental supports necessary to function in the community.

**"Qualified Service Agreement"** means a written, signed agreement between the ODMHSAS and facilities which contract with the ODMHSAS for the provision of mental health and domestic violence and sexual assault services which permits the transmittal of records and information regarding consumers as appropriate for the care and treatment of consumers. The information necessary for the diagnosis and treatment of a person may be exchanged between those signatory facilities directly involved in the treatment of a consumer without the individual's consent.

**"Rehabilitation assessment services"** means a process utilized to determine the individual's functional work-related abilities and vocational preferences for the purpose of rehabilitation assessment the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

**"Residential treatment"** means a structured, 24-hour supervised treatment program for individuals who are mentally ill with a minimum of twenty-one (21) hours of therapeutic services provided per week with the emphasis on stabilization and rehabilitation for transfer to a less restrictive environment. Stay in the program is time limited.

**"Restraint"** refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

**"Sentinel event"** is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

**"Serious Emotional Disturbance"** or **"SED"** means a child from birth to eighteen years of age who does not have a primary diagnosis of a developmental disorder(s) and meets the following criteria:

(A) possesses a diagnosable, serious disorder under DSM-IV such as pervasive developmental disorder, childhood schizophrenia, schizophrenia of adult-type manifesting in adolescence, conduct disorder, affective disorder, other disruptive behaviors, or other disorders with serious medical implications such as eating disorders, or persistent involvement with alcohol or drugs; and

(B) has a functioning level which includes: a moderate impairment in at least four; severe impairment in two; or extreme impairment in one of the following areas; OR has an illness with a duration of at least one year and has a functioning level of moderate impairment in at least two; or a severe impairment in one of the following areas:

(i) Feeling, mood and affect include: an uncontrolled emotion that is clearly disruptive in its effects on other aspects of a child's life; frustration, anger, loneliness and boredom persist beyond the precipitating situation; and symptoms of distress are pervasive and do not respond to encouragement or reassurance;

(ii) Thinking processes include: daily life is disrupted due to impaired thoughts and thinking process; an inability to distinguish between fantasy and reality exists; and unusual thoughts or attachments to objects are present;

(iii) Substance use includes: frequent difficulties due to substance use and repeated use of substances causing difficulty at home or in school;

(iv) Family situation includes: disruption of family relationships or family does not function as a unit and experiences frequent turbulence; relationships that exist are psychologically devastating; the child does not have family support and is abused or neglected;

(v) Interpersonally the child will: have a severe inability to establish or maintain a personal social support system; lacks close friends or group affiliations; is socially isolated; and lacks age appropriate social skills;

(vi) Role performance consists of: frequent disruption of role performance and the individual is unable to meet usual expectations; has persistent behavior problems; and has failure, or been suspended or expelled from school;

(vii) Socio-legal issues include: inability to maintain conduct within the limits prescribed by law, rules and strong mores; shows little concern for consequences of actions; and delinquent acts or frequent contact with law enforcement exists;

(viii) Self care and basic needs are such that the ability to care for self is considerably below expectation.

(ix) Caregiver resources are: the caregiver has difficulties in providing for the child's basic needs; or the developmental needs are such that there is a negative impact on the child's level of functioning;  
OR

"**Service area**" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services [43A O.S. § 3-302(1)].

"**Socialization**" means all activities which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

"**Special need, persons with**" means any persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf or hard of hearing-impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness.

See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"**Supervised apartment or housing programs**" means a temporary or permanent residential program for mental health consumers, in which the consumer resides in one of a group of apartments. These facilities are intended for use by mental health consumers who desire and are evaluated as being capable of living in an apartment setting, without on-site staff.

"**Supportive services**" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"**Vocational placement services**" means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement services such as the identification of employment positions, conducting job analysis, matching individuals to specific jobs, facilitating job expansion or advancement and communicating with employers about training needs.

"**Vocational preparation services**" means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

**450:17-1-5. New standards and criteria [REVOKED]**

~~As new and amended standards and criteria set forth in the rules in this chapter become effective under the provisions of regular rulemaking (75 O.S. §§ 250 through 308 and OAC Title 655, Chapter 10), all CMHCs affected shall come into compliance within one hundred and twenty (120) calendar days of the effective date. For new and amended standards and criteria approved under the provisions of emergency rulemaking (75 O.S. §§ 250 through 308 and OAC Title 655, Chapter 10), all CMHCs affected shall come into compliance within sixty (60) calendar days of notice by the ODMHSAS of the emergency rule(s) approval by the Governor.~~

**450:17-1-6. Services**

All facilities providing services shall have a group of services herein designated as core services. CMHCs may have specific additional services herein designated as optional services. Optional services may be an ODMHSAS contractual requirement(s).

- (1) Core services are:
  - (A) Screening, intake and referral;
  - (B) Emergency services, which ~~shall~~ include crisis intervention and emergency detention if the ~~Contractor~~ CMHC is also certified as a community based structured crisis center or provides acute inpatient services;
  - (C) Medication clinic services;

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- (D) Case management (adult and juvenile);
  - (E) Adult day programs;
  - (F) Outpatient counseling;
  - (G) Admitting to ~~ODMHSAS~~ state-operated inpatient psychiatric hospitals units; and
  - (H) Services to homeless individuals.
- (2) Optional services are:
- (A) Homebased services to children and adolescents;
  - (B) Day treatment services to children and adolescents;
  - (C) Vocational employment services;
  - (D) Community living programs;
  - (E) Independent living training programs;
  - (F) Supervised apartment or housing programs;
  - (G) Permanent sponsored apartment or housing programs;
  - (H) Crisis stabilization;
  - (I) Inpatient services within the CMHC setting; and
  - (J) Program for Assertive Community Treatment.

## SUBCHAPTER 3. REQUIRED SERVICES

### PART 1. REQUIRED SERVICES

#### 450:17-3-3. Availability of services

- (a) The core services shall be available to individuals regardless of their work schedule.
- (1) All services provided on an outpatient basis shall be routinely available at least forty (40) hours per week.
  - (2) CMHC policy shall provide an arrangement for hours in addition to other than 8:00 AM - 5:00 PM according to the needs of consumers. This applies to the main CMHC location and full time satellite offices with two (2) or more full time employed clinical staff.
  - (3) For ~~CMHCs~~ CMHCs not providing 24 hour on-site services, hours of operation shall be conspicuously posted.
- (b) Compliance with 450:17-3-3 shall be determined by a review of the following: schedules; posting of hours; policy and procedures; and consumer needs assessment.

#### 450:17-3-21. Screening intake and assessment services

- (a) CMHC policy and procedure shall require a comprehensive assessment of each consumer's service needs is completed in a timely manner.
- (b) Screening and intake services shall include a complete assessment of each consumer to determine clinical needs. This shall include but not be limited to an assessment of the following areas and needs:
- (1) Behavioral;
  - (2) Emotional;
  - (3) Physical;
  - (4) Social and recreational; and
  - (5) Vocational.

- (c) The consumer and family as appropriate shall be an active participant(s) in the intake and assessment process.
- (d) ~~The assessment process shall be completed by the fifth (5th) visit for outpatient services. For inpatient settings the assessment process shall be completed within seventy two (72) hours. For residential facilities the assessment process shall be completed by the fifth (5th) day of treatment. Any emergency admission to inpatient and residential services shall be assessed within one (1) hour for medical needs. The CMHC shall have policy and procedures specific to each program service which dictate timeframes by when assessments must be completed and documented. In the event the consumer is not admitted and as a result the assessment is not included in the clinical record, the policy shall specify how screening and assessment information is maintained and stored.~~
- (e) Compliance with 450:17-3-21 shall be determined by a review of clinical records, and policy and procedures.

#### 450:17-3-22. Screening intake and assessment services, access or referral to needed services

- (a) Written policy and procedures governing the intake and assessment services shall specify the following:
- (1) The information to be obtained on all applicants or referrals for admission;
  - (2) The procedures for accepting referrals from outside agencies or organizations;
  - (3) The procedure to be followed when an applicant or referral is found to be ineligible for admission; and
  - (4) Methods of collection of information from family members, significant others or other social service agencies.
  - (5) Methods for obtaining a physical examination or continued medical care ~~shall be defined for cases~~ where indicated.
  - (6) Referral to other resources when the consumer has treatment or other service needs the facility cannot meet.
- (b) Compliance with 450:17-3-22 shall be determined by a review of the facility's written policy and procedures.

### PART 5. EMERGENCY SERVICES

#### 450:17-3-41. Emergency services

- (a) CMHCs shall provide, on a twenty-four (24) hour basis, for psychiatric emergencies.
- (b) This service shall include the following:
- (1) 24-hour assessment and evaluation, including emergency examinations;
  - (2) Availability of 24-hour inpatient referral;
    - (A) CMHC staff shall be actively involved in the Emergency emergency services and referral process to the ~~hospital~~ state-operated psychiatric inpatient units.
    - (B) Referral to ~~the hospital~~ state-operated psychiatric inpatient units by the CMHC shall occur only after all other community resources are explored with the individual and family ~~(if family is available and the consumer gives written consent for release)~~.

(C) Prior notification to the ~~hospital state-operated psychiatric inpatient unit~~ of all referrals from CMHCs is required.

- (3) Availability of assessment and evaluation in external settings.
- (4) Referral services, which shall include actively working with local sheriffs and courts regarding the appropriate referral process and appropriate court orders (43A ~~43A~~ O.S. §§ 5-201 through 5-407);
- (5) CMHCs serving multiple counties shall provide or arrange for on-site assessment of persons taken into protective custody [43A O.S. § 5-06(5)] in each county;
- (6) The CMHC's emergency telephone response time shall be less than fifteen (15) minutes from initial contact, unless there are extenuating circumstances;
- (7) Face-to-face assessment; and
- (8) Intervention and resolution.

(b) Compliance with 450:17-3-41 shall be determined by a review of policy and procedures, and clinical records.

**450:17-3-42. Emergency services ~~outcome~~ examinations**

(a) ~~Persons needing hospitalization and Emergency services have received or been screened for that service in the office, external settings and outside of regular business hours as shown in the CMHC's documentation of its Emergency services. The CMHC shall provide or otherwise ensure the capacity for performing emergency examinations. This capacity must be available 24 hours per day, seven days a week.~~

(b) Compliance with 450:17-3-42 shall be determined by a review of the following: policy and procedures; emergency contact records; clinical records; PI documentation; and staff on-call schedules.

**450:17-3-43. Emergency services examinations, staffing**

(a) Staff providing ~~Emergency services, emergency examinations~~ shall be an LMHP qualified in Emergency services, consumer assessment and evaluation pursuant to as defined in 43A O.S. § 1-103 and meet the CMHC's privileging requirements for the provision of Emergency emergency services.

(b) Compliance with 450:17-3-43 shall be determined by a review of clinical privileging records and personnel records.

**PART 7. OUTPATIENT COUNSELING SERVICES**

**450:17-3-62. Outpatient counseling services, substance abuse**

- (a) Facilities shall provide outpatient substance abuse counseling services.
- (b) These services shall include the provision of Human Immunodeficiency Virus (HIV) education, training, and counseling services for drug dependent persons (43A O.S. § 3-125.1), and every facility shall:

- (1) Provide educational sessions regarding HIV to such persons, and also make the sessions available to spouses or other sexual partners of the drug dependent person; and
- (2) Refer all drug dependent persons for HIV infection testing and counseling.

~~(c3)~~ The HIV testing and counseling may be provided by the facility, or through a public or private organization for the testing or counseling services. All test results shall be maintained in the confidential manner prescribed by applicable state or federal statutes or regulations.

~~(ed)~~ Compliance with 450:17-3-62 shall be determined by a review of the following: written policy and procedures; substance abuse consumer records; and other supporting facility records and documentation.

**PART 9. MEDICATION CLINIC SERVICES**

**450:17-3-81. Medication clinic services**

(a) Medication clinic services shall include an assessment of each individual's condition and needs; and an assessment of the effectiveness of those services.

(b) CMHCs shall offer comprehensive medication clinic services to consumers in need of this service, including, but not limited to:

- (1) Prescribing or administering medication, including evaluation and assessment of the medication services provided.
- (2) Medication orders and administration:
  - (A) Only licensed staff physicians, medical residents or consultant physicians shall write medication orders and prescriptions.
  - (B) A list of those physicians authorized to prescribe medications shall be maintained and regularly updated.
  - (C) A list of licensed staff members ~~licensed-authorized~~ to administer medications shall be maintained and regularly updated.

(3) Physician's assistants and nurse practitioners may write medication orders, or prescriptions consistent with state and federal law.

(c) Compliance with 450:17-3-81 shall be determined by on-site observation; and a review of the following: clinical records, written policy and procedures, and roster of licensed, credentialed staff.

**450:17-3-82. Medication clinic, medication monitoring**

(a) Medication administration; ~~storage and control;~~ and consumer reactions shall be regularly consistently monitored.

(b) Facilities shall assure proper storage and control of medications, immediate response if incorrect or overdoses occur, and have appropriate emergency supplies available if needed.

- (1) Written procedures for medication administration shall be available and accessible in all medication storage areas, and available to all staff authorized to administer medications.

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- (2) All medications shall be kept in locked, non-consumer accessible areas. Conditions which shall be considered in medication storage are light, moisture, sanitation, temperature, ventilation, and the segregation and safe storage of poisons, external medications, and internal medications.
- (3) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed, or administered, or stored.
- (4) A qualified physician shall supervise the preparation and stock of an emergency kit which is readily available, but accessible only to staff.
- (c) Compliance with 450:17-3-82 shall be determined by on-site observation;—and a review of the following: written policy and procedures, clinical records, and PI records.

## 450:17-3-83. Medication clinic, error rates

- (a) Medication administration or dispensing or medication orders and prescriptions shall be accomplished with no more than three percent (3%) error rate each month. Random selection of at least one-third (1/3) of the months within the period under review ~~will~~ shall be surveyed by the CMHC in accordance with facility policies.
- (b) Compliance with 450:17-3-83 shall be determined by a review of the following: facility policies; PI logs; data; and reports.

## PART 11. CASE MANAGEMENT

### 450:17-3-101. Case management services, adult

- (a) Case management efforts shall empower consumers to access and use needed services and meet self-determined goals. These services include resource skills development, consumer advocacy and rehabilitation services provided in various settings based on consumer need.
- (b) Case management services shall be made available to all adults who have a serious mental illness, and shall provide the following:
  - (1) ~~All adults who have a serious mental illness shall be screened~~ Screening to determine their need for case management services. ~~—which~~
  - (2) ~~Screening~~ shall include evidence the following were evaluated:
    - (A) Consumer's level of functioning within the community;
    - (B) Consumer's job skills and potential;
    - (C) Client strengths and resources;
    - (D) Consumer's present living situation and support system;
    - (E) Consumer's needs or problems which interfere with the ability to successfully function in the community; ~~and~~
- (2) Emergency services and emergency assistance; and
- (3) Service planning and monitoring, which shall address issues and problems identified in the consumer evaluation and shall also:

- (A) Incorporate needed referral sources to address identified consumer needs;
  - (B) ~~Developed~~ Be developed jointly between the case manager and the consumer;
  - (C) ~~Frequency~~ Address the frequency of case management services ~~shall be~~ specified in the treatment plan; and
  - (D) ~~Incorporate~~ Be incorporated into the treatment plan and ~~monitor~~ monitored at least every six (6) months.
- (4) ~~Provide for Emergency services and emergency assistance.~~
  - (c) Compliance with 450:17-3-101 shall be determined by on-site observation;—and a review of the following: clinical records, and written policy and procedures.

### 450:17-3-101.1. Case management services, juvenile child, adolescent and family

- (a) Case management services shall be offered to children and their families to assure access to needed services. This includes referral, linkage and advocacy. These services may be offered to any child or family who presents for service at a community mental health center but must be offered to a child identified as Seriously Emotionally Disturbed, or when a child being served by the CMHC is assessed through gatekeeping and admitted to acute or residential treatment.
- (b) The case manager shall know the local available services, the procedures and criteria for assessing local services. The case manager shall act as an advocate for the child and family in obtaining needed community resources, including coordination of efforts with the child's school.
- (c) The case manager shall develop a case management service plan based on the needs of the child and family.
- (d) The case management services shall be specified in the child's case management service plan. The inability to make face-to-face contact shall be documented in the child's case record.
- (e) Compliance with 450:17-3-101.1 shall be determined by review of case records of consumers, and their families, receiving juvenile case management services.

### 450:17-3-103. Case management services for the hospitalized consumer

- (a) Case managers shall maintain contact with hospitalized consumers. Individuals in ~~a hospital~~ an inpatient psychiatric unit setting shall be provided face-to-face case management assessment upon ~~hospital~~ discharge. This shall occur as soon as possible, but shall not exceed ~~two (2) weeks~~ one (1) week post-discharge. ~~Exceptions to this requirement shall be granted only when the circumstance is documented and well justified.~~
- (b) Case managers from the ~~receiving service area~~ CMHC to which the consumer will be discharged shall assist the consumer and ~~hospital~~ psychiatric inpatient unit with discharge planning for consumers returning to the community.
- (c) Each CMHC shall assign at least one (1) staff member who is responsible for linkage between ~~the ODMHSAS~~

~~operated psychiatric hospital inpatient unit~~ and the CMHC. Linkage shall include, but not be limited to, the following activities:

- (1) Regular visits or communication with the ~~ODMHSAS operated psychiatric hospital inpatient unit~~ to monitor progress of those consumers hospitalized from the CMHC's service area.
- (2) Attendance at ~~linkage~~ meetings established for the purpose of improving communication and coordination between the ~~state hospital inpatient unit~~ and the CMHC.
- (3) Provide knowledge and communication to other CMHC staff regarding ~~ODMHSAS operated psychiatric hospital psychiatric inpatient unit~~ admission and discharge procedures.
- (d) Compliance with 450:17-3-103 shall be determined by a review of the following: clinical records; staff interviews; information from ODMHSAS operated psychiatric inpatient unit; ~~linkage~~ meetings minutes (CMHC or ~~ODMHSAS state-operated psychiatric hospital inpatient unit~~); and a review of a minimum of ten (10) clinical records of consumers hospitalized within the past twelve (12) months.

**450:17-3-106. Case management services, staff credentials**

- (a) Individuals providing ~~adult or juvenile~~ case management services shall ~~minimally have the following qualifications be certified as a behavioral health case manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50.~~
  - (1) ~~Bachelors degree in a behavioral health field;~~
  - (2) ~~Successful completion of twenty four (24) hours of ODMHSAS Case Management Training; and~~
  - (3) ~~Successful completion of the ODMHSAS Case Management Training Project.~~
- (b) ~~Continued ODMHSAS approval as a case manager shall include documentation of twelve (12) hours of continuing education, submitted to ODMHSAS for approval. Compliance with 450:17-3-106 shall be determined by a review of the facility personnel records and credentialing files. documentation of ODMHSAS Case Manager training and official college transcripts.~~

**PART 13. ODMHSAS OPERATED PSYCHIATRIC HOSPITALS**

**450:17-3-122. Persons presenting at ~~ODMHSAS a state-operated inpatient psychiatric hospital unit~~ for purpose of admission, pre-screening of**

- (a) ~~Persons presenting at ODMHSAS operated psychiatric hospitals for admission shall have been pre-screened locally by the CMHC. The CMHC shall insure all persons the CMHC refers to the state-operated inpatient psychiatric unit for admission have been pre-screened.~~
  - (1) Pre-screening shall be performed by or arranged by the CMHC ~~of all referrals to the ODMHSAS operated psychiatric hospital.~~

- (2) CMHC staff ~~is shall be~~ actively involved in the ~~Emergency~~ emergency service and referral process to the ~~hospital state-operated inpatient psychiatric unit.~~
- (3) Referral to the ~~hospital state-operated inpatient psychiatric unit~~ by the CMHC ~~shall only occurs~~ occur after all other community resources are explored with the individual and family (if family is available).
- (4) Prior notification to the ~~hospital state-operated inpatient psychiatric unit~~ of all referrals from CMHC is required.
- (5) ~~CMHC's~~ CMHCs shall work actively with local sheriffs and courts regarding appropriate referral process and appropriate court orders.
- (b) Compliance with 450:17-3-122 shall be determined by a review of the following: CMHC clinical records; ~~ODMHSAS state-operated psychiatric hospital inpatient unit~~ information and admission records; ~~consumer ICIS data~~; and PI monitoring information from ~~both the CMHC and the ODMHSAS operated psychiatric hospital.~~

**PART 15. ADULT DAY PROGRAMS**

**450:17-3-141. Day programs - day treatment and psychosocial rehabilitation programs**

- (a) This section governs day programs for individuals who have serious mental health related problems. These standards cover two types of day programs: day treatment and psychosocial rehabilitation.
- (b) The CMHC shall provide either, or both, day treatment or psychosocial treatment services in an environment and with the staff that enhance the achievement of consumers' goals.
- (c) The ~~consumer to staff to consumer~~ ratio shall not be ~~less greater than 14 consumers to one (1) staff person 1:14,~~ unless specifically justified based on program structure and acuity of the individuals served.
- (d) Compliance with 450:17-3-141 shall be determined by on-site observation; and a review of ICIS data and clinical records.

**450:17-3-142. Day programs - day treatment**

- (a) Day treatment programs shall utilize therapeutic modalities oriented toward enriching the consumer's life, and enhancing the consumer's ability to live in the community on an independent or semi-independent basis. These therapeutic modalities shall minimally:
  - (1) ~~Day offer day~~ treatment services ~~shall be offered~~ on a scheduled basis, a minimum of three (3) hours per day for at least two (2) days per week;-
  - (2) ~~Provide~~ provide and enhance social skills development through activities which encourage interaction, and the development of communication and interpersonal skills;
  - (3) ~~Encourage~~ encourage independent living skills development;
  - (4) Include recreational and leisure activities, with emphasis placed on the development of and access to community resources;

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- (5) ~~Include~~ include cognitive education, including but not limited to education about their psychiatric illness and condition;
  - (6) ~~Consumers shall have~~ insure consumers have input into the planning of program activities. This input shall be documented; and,
  - (7) ~~The program shall~~ have an established schedule of ~~activities~~ to be provided on a routine weekly or monthly basis.
- (b) Compliance with 450:17-3-142 shall be determined by a review of the following: program schedules of the CMHC; activity schedules of the CMHC; and needs assessment of services by the CMHC.

## 450:17-3-144. Day programs - psychosocial rehabilitation program

- (a) The psychosocial rehabilitation program shall be designed to provide an array of services within the framework of the psychosocial rehabilitation model based upon member need.
- (b) The program shall be open a minimum of six (6) hours per day for at least three (3) days per week.
- (c) This program shall incorporate the following functions:
  - (1) All consumers involved in the program shall have equal access to program services and opportunities.
  - (2) The amount of consumer involvement in the program is based on the individual consumer needs.
  - (3) The program shall establish its own name identity as determined by the consumers.
  - (4) Consumers and staff shall be given the opportunity to work together in every function of the program.
  - (5) Consumers shall be given the opportunity to be involved in all the functions of the program administration intake and orientation, outreach, hiring and training of staff, work unit planning, advocacy and evaluation of program effectiveness.
  - (6) ~~Provide~~ The program shall provide or arrange for consumer education opportunities which focus both on basic education and advanced education for example; GED, Adult Basic Education, etc.
  - (7) Consumers shall have access to an active prevocational/vocational component, including providing for or arranging for an employment placement program.
  - (8) ~~Include some~~ The program shall include recreational and social programs and activities scheduled during evening times or on weekends as planned by the consumers.
- (d) Compliance with 450:17-3-144 shall be determined by interviews with consumers<sub>;</sub> interviews with staff<sub>;</sub> and a review of policy and procedures.

### 450:17-3-144.1. Exception day program, psychosocial rehabilitation program scoring

- (a) When a facility's psychosocial rehabilitation day program is accredited by the International Center for Clubhouse Development (ICCD) the requirements for section

450:17-3-144 shall be considered met, provided the following conditions are met:

- (1) The CMHC has previously forwarded a copy of the current accreditation by the ICCD with its renewal application ~~for recertification currently under consideration.~~
  - (2) The period of accreditation is for at least six (6) months following the certification site visit.
- (b) However, the CMHC shall subsequently forward the following to ODMHSAS:
- (1) At least sixty (60) days prior to expiration of ICCD accreditation a copy of the application to ICCD for ~~reaccreditation~~ re-accreditation of its adult day program, psychosocial rehabilitation program.
  - (2) A copy of the ~~reaccreditation~~ re-accreditation visit schedule received from ICCD.
  - (3) Within sixty days of the ICCD ~~reaccreditation~~ re-accreditation visit, a copy of the decision of ICCD regarding ~~reaccreditation~~ re-accreditation.
  - (4) Any interim notice or decision of ICCD regarding the CMHC's accreditation status.

## PART 17. SERVICES TO HOMELESS INDIVIDUALS

### 450:17-3-161. Services to homeless individuals

- (a) CMHCs shall provide linkage services to adults who have a serious mental illness and are homeless. These persons need access to a variety of support services.
- (b) CMHCs shall provide the following services to individuals within their service area who are homeless and who have a serious mental illness:
  - (1) Linkage and contacts with local emergency services, shelters, ~~ODMHSAS state-operated psychiatric hospitals inpatient unit~~, and any other organizations which may be in contact with homeless persons;
  - (2) Linkage and contacts with local housing authorities;
  - (3) Contact, and work with those who are homeless and who have a serious mental illness, to assist with accessing CMHC services, income benefit programs, and housing programs, among other services; and .
  - (4) These services shall be addressed in CMHC policy and procedures.
- (c) Compliance with 450:17-3-161 shall be determined by a review of the following: documentation of linkage activities and agreements; clinical records; ICIS reporting data; and, CMHC policy and procedures; ~~and use of Homeless Flex Funds.~~

## SUBCHAPTER 5. OPTIONAL SERVICES

### PART 5. HOMEBASED SERVICES TO CHILDREN AND ADOLESCENTS

**450:17-5-22. Homebased services to children and adolescents, family preservation**

- (a) Homebased services to children and adolescents may be available in any location based on consumer's need for the purpose of reducing psychiatric impairment or preventing out-of-home placement. If provided, these services shall:
  - (1) Be provided based on an assessed family need for this intensive service to prevent unnecessary out-of-home placement of the child/adolescent;
  - (2) Have written policies and procedures specifically defining the philosophy to include:
    - (A) Provision of, or arrangement for, twenty-four (24) hour Emergency services;
    - (B) Provision of parent education and training;
    - (C) Accessing community resources and services for children and families; and
  - (3) Home services scheduled as the child and family's needs dictate, taking into account services will often times need to be offered during evening and weekend hours; and
  - (4) ~~Insure staff providing direct homebased/family preservation consumer services shall complete the home-based training conducted by ODMHSAS within ninety (90) days of employment; and~~
  - (5) Limit caseload size, based on the acuity level of the children and families, not to exceed a caseload of twelve (12) families actively involved in homebased services.
- (b) Compliance with 450:17-5-22 shall be determined by a review of written policy and procedures; consumer clinical records; ICIS data; and on-site observation/staff observation; and staff interviews.

**PART 9. VOCATIONAL EMPLOYMENT SERVICES**

**450:17-5-45. Vocational employment services**

- (a) The vocational employment services program is an identified program within the CMHC that assists in the rehabilitation and support of persons with psychiatric disabilities, which may include but is not limited to the following:
  - (1) Rehabilitation assessment services;
  - (2) Vocational preparation services;
  - (3) Job development services;
  - (4) Vocational placement services; and
  - (5) ~~Follow along~~ Case management and other supportive services.
- (b) Compliance with 450:17-5-45 shall be determined by on-site observation; and a review of the following: organization chart; interagency agreements; written policy and procedures; and contractual agreements.

**PART 11. COMMUNITY LIVING PROGRAMS**

**450:17-5-56. Community living programs**

- (a) Community living programs shall provide a range of rehabilitative housing options for persons not in crisis who need

a special living arrangement. The following specific program types are included:

- (1) Independent living;
- (2) Supervised housing;
- (3) Permanent supported housing; and
- (4) ~~Family Self Sufficiency program-Permanent congregate housing.~~
- (b) ~~This standard applies to all programs defined by ODMHSAS as a Community Living Program; however a CMHC is not required to offer all of these program types.~~
- (e) A community living program shall have written policies and procedures specifying how, and by whom, the following services shall be performed:
  - (1) Medical treatment for residents on both emergency and routine bases;
  - (2) Mental health and substance abuse services on both emergency and routine bases;
  - (3) Social and occupational evaluation and progress planning;
  - (4) Occupational and vocational training;
  - (5) Assistance to consumers in locating appropriate alternative living arrangements as clinically indicated or requested;
  - (6) Resolution of inappropriate admissions or placements; and
  - (7) ~~The program shall have a~~ A mechanism for orientation and education of new residents, which shall include, at least:
    - (A) Emergency procedures, including fire, health and safety procedures;
    - (B) Consumer rights and responsibilities; and
    - (C) Program expectations and rules.
- (dc) Compliance with 450:17-5-56 shall be determined by a review of the CMHC written policy and procedures.

**450:17-5-67. Permanent supported apartment or housing programs, socialization and recreation**

- (a) The CMHC shall offer, or arrange for, socialization and recreational opportunities at least twice a week for individuals ~~in the program-permanent supported apartment or housing programs;~~ and socialization activities shall be equally available to all residents.
- (b) Compliance with 450:17-5-67 shall be determined by interviews with residents, staff, and appropriate CMHC staff; and a review of CMHC policy and procedures, and consumer records.

**450:17-5-67.1. Permanent supported apartment or housing programs, socialization and recreation monthly contacts and activities**

- (a) The CMHC ~~program permanent supported apartment or housing programs~~ shall make ongoing monthly contact with each tenant, either on- or off-site.

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(b) Day program services for unemployed individuals or individuals not involved in other structured day programs shall be available.

(c) The program shall offer at least one (1) evening activity per week.

(d) The program shall offer independent living skill training based upon documented consumer need as validated by functional skills assessment. This training shall include working side by side with consumers to provide instruction in the development of independent living skills.

(e) Compliance with 450:17-3-67.1 shall be determined by on-site observation; tenant interviews; interviews with appropriate CMHC staff; and review of facility documentation of the program.

### **450:17-5-67.2. Permanent supported apartment or housing programs, consumer housing assistance, documentation of**

(a) The CMHC ~~program permanent supported apartment or housing programs~~ shall facilitate the acquisition of permanent, scattered site housing in the community, which in any given apartment complex has no more than fifty-percent (50%) of its residents with psychiatric disabilities.

(b) Consumer choice shall be documented in the selection of housing.

(c) The consumer ~~holds the lease~~ shall be the lessee, and the services provider ~~is~~ shall not be the landlord.

(d) Services initially provided ~~are~~ shall be intensive and move to lower levels of care based on the needs of the tenant and such ~~is~~ shall be reflected in the treatment or housing plan.

(e) Compliance with 450:17-5-67.2 shall be determined by the following: on-site observation; interviews with tenants, staff and appropriate CMHC staff; and a review of facility and consumer record documentation.

### **450:17-5-67.3. Permanent congregate housing programs**

(a) Permanent congregate housing programs are programs in which the individual is assisted in finding an apartment or housing within the community, and there is not twenty-four (24) hour on-site supervision. In these programs, the following shall be available for all consumers, and shall be specified on the consumer's treatment plan as appropriate, according to individual consumer needs:

(1) At least one (1) weekly social or recreational activity ~~is~~ shall be offered in the evening.

(2) Eight (8) hours of services per week shall be offered.

(3) The eight (8) hours of services provided on-site shall be based on tenant preference, and these may include group therapy, independent living skills training, education groups, recreation or social skills training.

(b) Compliance with 450:17-5-67.3 shall be determined by the following: on-site observation; interviews with tenants, staff and appropriate CMHC staff; and a review of facility and consumer record documentation.

## PART 13. CRISIS STABILIZATION

### **450:17-5-81. Certification required for provision of crisis stabilization services**

If a CMHC chooses to provide crisis stabilization services as optional services, the CMHC must become certified as a Community-based Structured Crisis Center and comply with OAC Title 450, Chapter 23, Standards and Criteria for Community-based Structured Crisis Center.

## PART 15. INPATIENT SERVICES

### **450:17-5-100. Mechanical restraints**

(a) Mechanical restraints may only be utilized in hospitals, crisis stabilization units and inpatient services which are an integral part of a CMHC; and shall never be used unless it is determined by a licensed physician of the facility; to be required by the immediate needs of a consumer for the safety and protection of the consumer or other persons.

(b) The facility shall have a written protocol for the use of mechanical restraints which include, but is not limited to:

(1) Criteria to be met prior to authorization of the use of mechanical restraints;

(2) Signature of the person authorizing use is required;

(3) Time limit of said authorizations;

(4) Circumstances which automatically terminate an authorization;

(5) Setting a time period, not to exceed every fifteen (15) minutes, an individual in mechanical restraints shall be observed and checked by a registered nurse;

(6) Requiring in every use of mechanical restraints the specific reason for such use, the actual start and stop times of use, authorizing signature, and record of times the consumer was observed and checked. ~~{All the items listed in 450:18-5-3(b)(6) are shall be made a part of the consumer record-};~~

(7) Maintenance in the facility of a chronological log which includes the name of every consumer placed in mechanical restraints, and the date upon which this event occurred. ~~{This is the responsibility of the facility director-}; and~~

(8) A process of peer review to evaluate use of mechanical restraints.

## PART 19. PROGRAM FOR ASSERTIVE COMMUNITY TREATMENT

### **450:17-5-127. Program for assertive community treatment**

If a CMHC chooses to provide a program for assertive community treatment (PACT) as an optional service, the CMHC must become certified as a PACT and comply with OAC Title 450, Chapter 55, Standards and Criteria for Programs for Assertive Community Treatment.

## SUBCHAPTER 7. FACILITY CLINICAL RECORDS

**450:17-7-3. Basic requirements**

(a) ~~Each facility shall have documentation and written operational methods to assure the following: The CMHC's policies and procedures shall:~~

(1) ~~All consumer records with defined required documentation shall be filed within a case record. Define the content of the consumer record in accordance with 450:17-7-4 through 17-7-9.~~

(2) ~~A facility shall have defined. Define storage, retention and destruction requirements for consumer records. ODMHSAS operated CMHCs shall comply with the Department's Records Disposition Schedule as approved by the Oklahoma Archives and Records Commission.~~

(3) ~~Consumer. Require consumer records shall be contained within equipment which is maintained under locked, secure measures.~~

(4) ~~All. Require legible entries in consumer records shall be legible, signed with first name or initial, last name, and dated by the person making the entry.~~

(5) ~~The consumer. Require the consumer's name shall be identified typed or written on each page sheet in the consumer record.~~

(6) ~~Before any person can be admitted for treatment at a facility, Require a signed consent for treatment shall be obtained. before a consumer is admitted on a voluntary basis.~~

(7) ~~A. Require a signed consent for follow-up shall be obtained before any contact after discharge can be is made.~~

(b) Compliance with 450:17-7-3 shall be determined by a review of the following: facility policy, procedures, or operational methods; clinical records; other facility provided documentation; and PI information and reports.

**450:17-7-4. Record access for clinical staff**

(a) The CMHC shall assure consumer records are readily accessible to the program staff directly caring for the consumer. Such access shall be limited to the minimum necessary to carry out the staff member's job functions or the purpose for the use of the records.

(b) Compliance with 450:17-7-4 shall be determined by on-site observation; and staff interviews.

**450:17-7-5. Clinical record content, intake and assessment**

(a) All facilities shall assess each individual to determine appropriateness of admission.

(b) ~~A Request for Service form. The CMHC shall be completed to document the first contact per episode between the potential consumer and the CMHC to determine appropriateness of admission.~~

(c) Consumer intake information shall contain, but not be limited to, the following identification data:

- (1) ~~Identification data:~~
- (2A) Consumer name;
- (3B) Home address;
- (4C) Telephone number;
- (5D) Referral source;

(6E) Reason for referral;

(7F) Significant other to be notified in case of emergency;

(8G) ICIS intake data core content; and

(9H) Presenting problem and disposition.

(d) ~~A comprehensive assessment for routine admissions shall be completed within seventy-two (72) hours for inpatient treatment facilities.~~

(e) Compliance with 450:450:17-7-5 shall be determined by a review of the following: intake assessment instruments and other intake documents of the facility; and clinical records and other agency documentation of intake materials or requirements.

**450:17-7-6. Health and drug history**

(a) A health and drug history shall be completed for each consumer at the time of admission.

(b) The drug history shall include, at a minimum, the following obtainable information regarding:

- (1) Name of medication;
- (2) Strength and dosage of current medication;
- (3) Length of time patient was on the drug, if known;
- (4) Benefit(s) of medication;
- (5) Side effects; and
- (6) Relevant drug history of family members.

(c) Compliance with 450:17-7-6 shall be determined by a review of clinical records.

**450:17-7-7. Psychosocial evaluation**

(a) All consumer records shall include a psychosocial evaluation, which shall include:

- (1) Date, to include month, day and year of interview or intake including re-admissions for CMHC services re-openings;
- (2) Identification information, to minimally include consumer's first name, middle initial and last name, gender, birth date, source of referral, and additional information as required by the facility;
- (3) Source of information;
- (4) Presenting problem;
- (5) Personal history, including:
  - (A) Family - social,
  - (B) Educational,
  - (C) Cultural - moral beliefs,
  - (D) Occupational - military,
  - (E) Sexual,
  - (F) Marital,
  - (G) Domestic violence or sexual assault,
  - (H) Recreation and leisure,
  - (I) Financial,
  - (J) Clinical treatment history, including:
    - (i) Medical treatment; and
    - (ii) Psychiatric treatment; and
  - (K) Legal or criminal record; and
  - (L) Substance abuse;
- (6) Present life situation;
- (7) Interviewer's interpretation of findings;

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- (8) What consumer wants in terms of service;
  - (9) Disposition;
  - (10) Mental status exam, including:
    - (A) Physical presentation, such as general appearance, motor activity, attention and alertness, etc.,
    - (B) Affective process, such as mood, affect, manner and attitude, etc., and
    - (C) Cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory, etc;
  - (11) Level of functioning; and
  - (12) Signature of interviewer and professional credentials, if any.
- (b) ~~This psychosocial evaluation shall be completed within the following time frames: This psychosocial evaluation shall be completed within the following time frames: The CMHC shall have policy and procedures that dictate timeframes by when psychosocial evaluations must be completed for each program service to which a client is admitted.~~
- ~~(1) Outpatient treatment setting: no later than five (5) visits following admission; or~~
  - ~~(2) Independent living and residential programs: as soon as possible after admission, but no later than the fifth day of service.~~
- (c) A psychosocial evaluation update, to include date, ID information, source of information, present problems, present life situation, what consumer wants in terms of service, and mental status examination, is acceptable only on re-admissions within one (1) year of previous admission.
- (d) Compliance with 450:17-7-7 shall be determined by a review of the clinical records, and policies and procedures.

## 450:17-7-8. Treatment plan

- (a) The treatment plan shall provide evaluation, formation of measurable treatment objectives and ongoing changes in goals and objectives based upon consumer's progress or identification of new problems.
- (b) An initial treatment plan shall be completed after the first assessment or treatment session on all consumers.
- (c) ~~Comprehensive treatment plans shall be completed on or before the fifth (5th) visit in an outpatient setting, the fourth (4th) day on inpatient treatment, and by the fifth (5th) day in a residential treatment setting. The CMHC shall have policy and procedures that dictate timeframes by when comprehensive treatment plans must be completed for each program service to which a consumer is admitted.~~
- (d) Comprehensive treatment plan contents shall:
  - (1) Describe assets and liabilities;
  - (2) Reflect consideration of clinical needs;
  - (3) Specify services necessary to meet the needs;
  - (4) Include referrals for needed services;
  - (5) Contain specific goals;
  - (6) Contain measurable time framed objectives;
  - (7) Specify frequency of treatment;
  - (8) Designate person(s) responsible for providing treatment;
  - (9) Delineate specific discharge criteria;

- (10) Include substantiated diagnosis in terminology of DSM IV (or ~~any~~ a subsequent DSM)—published by the American Psychiatric Association; and
  - (11) Describe the consumer's involvement in, and consumer's response to the treatment plan and the consumer's signature.
- (e) Treatment ~~and service~~ plans shall be dated and signed by all members of the treatment team who participate in the planning or in providing the services.
- (1) Treatment plan updates shall contain:
    - (A) Change in goals and objectives based upon consumer's progress or identification of new problems;
    - (B) Change in primary clinician ~~counselor~~ assignment;
    - (C) Change in frequency or types of services provided; and
    - (D) A statement documenting review, including an explanation if no changes are made in the plan.
  - (2) ~~Treatment plan update time frames shall be as follows: The CMHC shall have policy and procedures that dictate timeframes by when treatment plan updates must be completed for each program service to which a client is admitted.~~
    - ~~(A) Outpatient and day treatment — every six (6) months.~~
    - ~~(B) Residential treatment, independent living, and halfway house — monthly.~~
    - ~~(C) Inpatient — every 30 days for 3 months then every 60 days. However, if the consumer is under 21 years of age, then every 30 days.~~
- (f) Compliance with 450:17-7-8 shall be determined by a review of the clinical records, ~~clinical record compliance to be determined by a composite average of the individual content factors.~~

## 450:17-7-9. Medication record

- (a) A medication record shall be maintained on all consumers who receive medications or prescriptions through the outpatient clinic services and shall be a concise and accurate record of the medications the consumer is receiving or having prescribed.
- (b) The consumer record shall contain a medication record with the following information on all medications ordered or prescribed by physician staff:
  - (1) The record of medication administered, dispensed and prescribed shall include all of the following:
    - (A) Name of medication,
    - (B) Dosage,
    - (C) Frequency of administration or prescribed change,
    - (D) Route of administration, and
    - (E) Staff member who administered or dispensed each dose, or prescribing physician; and
  - (2) A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities ~~shall be obtained~~ during intake, updated when required by virtue

of new information, and kept in a highly visible location in or on the record.

(c) Compliance with 450:17-7-9 shall be determined by a review of medication records ~~in clinical records~~; and a review of clinical records.

**450:17-7-10. Progress notes**

(a) Progress notes shall chronologically describe the consumer's progress in treatment and document the consumer's response to services related to the treatment.

- (b) Progress notes shall address the following:
  - (1) Person(s) to whom services were rendered;
  - (2) Activities and services provided as they relate to the goals and objective of the treatment plan, including ongoing reference to the treatment plan;
  - (3) Documentation of the progress or lack of progress made in treatment as it relates to the treatment plan;
  - (4) Documentation of the implementation of the individualized treatment plan, including consumer activities and services and all treatment rendered;
  - (5) The consumer's current status;
  - (6) Documentation of the consumer's response to treatment services, changes in behavior and mood, and outcome of treatment or services;
  - (7) Plans for continuing therapy or for discharge, whichever is appropriate; and
  - (8) Family's response to services provided when applicable.

(c) Progress notes shall be documented according to the following time frames:

- (1) Outpatient staff must document each visit or transaction including missed appointments;
- (2) Residential and independent living staff must document: each day of services, summary note monthly; and
- (3) Inpatient: nursing service is to document on each shift. Each member of the treatment team shall write a weekly progress note for the first two months and monthly thereafter.

(d) Compliance with 450:17-7-10 shall be determined by a review of clinical records.

**SUBCHAPTER 9. CONSUMER RECORDS AND CONFIDENTIALITY**

**450:17-9-1.1. Confidentiality of mental health and drug or alcohol abuse treatment information**

(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless a state or federal law exception applies.

(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:

- (1) an acknowledgment that all mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;
- (2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;
- (3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;
- (4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;
- (5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws and
- (6) a procedure by which to notify a consumer of his or her right to confidentiality.

(c) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:

- (1) the name of the person or program permitted to make the disclosure;
- (2) the name or title of the person or the name of the organization to which disclosure is to be made;
- (3) the name of the consumer whose records are to be released;
- (4) a description of the information to be disclosed;
- (5) the specific reason for the disclosure;
- (6) the signature of the consumer or the consumer's legally authorized representative;
- (7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;
- (8) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;
- (9) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;

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(10) a confidentiality notice which complies with state and federal law; and

(11) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)."

(d) Compliance with 450:17-9-1.1 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.

## SUBCHAPTER 11. CONSUMER RIGHTS

### 450:17-11-1. Consumer rights, inpatient and residential

(a) All consumers shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Each facility either operated by, or certified by, or under contract with ODMHSAS providing inpatient mental health or substance abuse services shall insure consumers have the rights specified as follows. For purposes of this section, inpatient and residential type services include ~~hospitals inpatient psychiatric units, residential care homes, halfway houses, three quarterway houses, group homes,~~ supervised apartments, ~~family sponsor homes,~~ and any other service in which the consumer resides in the facility, or a place owned, lease, operated by, or under contract with the facility, overnight.

(1) All consumers have the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.

(2) All consumers have the right to a safe, sanitary, and humane living environment.

(3) All consumers have the right to a humane psychological environment protecting them from harm, abuse, and neglect.

(4) Each consumer has the right to an environment which provides reasonable privacy, promotes personal dignity, and provides opportunity for the consumer to improve his or her functioning.

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

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

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

(8) Each consumer has the right to uncensored, private communications including, but not limited to, letters, telephone calls, and personal visits. Copies of any personal letter, sent or received, by a consumer shall not be kept in his or her clinical record.

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

(10) Each consumer has the right to be treated in the least restrictive environment (level of care), and to have the maximum freedom of movement consistent with the clinical condition and legal status of the consumer.

(11) Each consumer has the right to easy access to his or her personal funds on deposit with the facility, and shall be entitled to an accounting for said funds. A limitation on access to such funds may be made when it is determined, and documented, as essential to prevent the consumer from unreasonably and significantly dissipating his or her assets.

(12) Each consumer has the right to have his or her own clothing and personal possessions. This right may be forfeited, or limited, only if the personal property is determined to be potentially dangerous to the consumer, or others, or if the property is determined to be functionally unsafe or illegal.

(13) Each consumer shall have the right to practice his or her own religious beliefs, and afforded the opportunity for religious worship. No consumer shall ever be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.

(14) Each consumer has the right to be provided with prompt, competent, appropriate treatment services and an individualized treatment (service) plan.

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

(B) The consumer may consent, or refuse to consent, to the proposed treatment.

(C) The consumer's right to consent, or refuses to consent, may be abridged for those consumers adjudged incapacitated by a court of competent jurisdiction, and in emergency situations where the consumer, or others, are in imminent danger.

(D) When the consumer permits, the consumer's family or significant others shall be involved in the treatment and treatment planning.

(15) The records of each consumer shall be treated in a confidential manner.

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

(17) A consumer may voluntarily participate in work therapy, and shall be paid just compensation for such participation. However each consumer is responsible for personal care and housekeeping tasks without compensation.

(18) A consumer being discharged shall have plans for outpatient treatment, sufficient medication, suitable

clothing for the reason, housing information and referral; and, if the consumer permits, family or significant others' involvement in the discharge plan.

(19) Each consumer shall have the right to establish and to participate in a consumer committee, or consumer government, by unit, any other administrative consumer unit, or facility-wide.

(20) Each consumer has the right to request the opinion of an outside medical or psychiatric consultant, at the expense of the consumer; or the right to an internal facility consultation, at no cost to the consumer.

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

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

(b) ~~Each affected facility~~ The CMHC shall have written policy and implementing procedures, and shall provide documented staff training to insure the implementation of each and every consumer right stated in this section.

(c) ~~Each affected facility~~ The CMHC shall have written policy and implementing procedures to insure each consumer enjoys, and has explained to him or her, these rights; and these rights are visibly posted in both consumer and public areas of the facility.

(d) Compliance with 450:17-11-1 shall be determined by a review of facility policy and procedures; posted notices of consumer rights; interviews with staff and consumers; review of grievances by consumers or others; and any other supporting facility documentation.

**450:17-11-3. Consumer's grievance policy**

(a) Each CMHC shall have a written ~~Consumer's Grievance Policy~~ grievance policy and procedure providing for, but not limited to, the following:

(1) ~~Written~~ written notice of the grievance and appeal procedure provided to the consumer; ~~or guardian~~ and, if involved with the consumer, to family members or significant others;

(2) Time frames for the grievance policy's procedures which allow for ~~expedient~~ resolution within fourteen (14) days;

(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authorized to make decisions for resolution of the grievance. In the instance where the decision maker is the subject of a grievance, decision making authority shall be delegated;

(4) Procedure by which ~~an individual may appeal the outcome~~ a written notice is provided to a consumer advising that he or she has the right to make a complaint to the ODMHSAS Consumer Advocacy Division;

(5) Mechanism to monitor the grievance process and improve performance based on outcomes; and

(6) Annual review of the grievance policy and its implementing procedures, with revisions as needed to improve.

(b) Compliance with 450:17-11-3 shall be determined by a review of the following:

~~(1) a review of~~ the CMHC's grievance policy and implementing procedures;

~~(2)~~ posted notices of consumer rights;

~~(3)~~ interviews with staff and consumers;

~~(4) review of~~ the CMHC's records of grievances filed by consumers or family and significant others; and

~~(5)~~ any other supporting facility documentation.

**450:17-11-4. ODMHSAS ~~advocate general consumer advocacy division~~**

The ODMHSAS ~~Advocate General~~ Office of Consumer Advocacy, in any investigation or monitoring regarding consumer rights shall have access to consumers, facility records and facility staff as set forth in OAC 450:15-7-3(b).

**SUBCHAPTER 13. ORGANIZATIONAL MANAGEMENT**

**450:17-13-1. Organizational and facility description**

(a) The ~~facility~~ CMHC shall have a written organizational description which is reviewed annually and minimally includes:

(1) The overall target population for whom services will be provided;

(2) The overall mission statement; and

(3) The annual facility goals and objectives;

(b) The ~~facility's~~ CMHC's governing authority shall review and approve the mission statement and annual goals and objectives and document their approval.

(c) The ~~facility~~ CMHC shall make the organizational description, mission statement and annual goals ~~have documentation verifying these documents are~~ available to staff.

(d) The ~~facility~~ CMHC shall make the organizational description, mission statement and annual goals ~~have documentation verifying these documents are~~ available to the general public upon request.

(e) Each ~~facility~~ CMHC shall have in writing, by program component or service, the following:

(1) Philosophy and description of services;

(2) ~~Identify~~ Identity of the professional staff that provides these services;

(3) Admission and exclusionary criteria that identify the type of consumers for whom the services is primarily intended; and

(4) Goals and objectives.

(f) The ~~facility~~ CMHC shall have written procedures and plans for attaining the organization's goals and objectives. These procedures and plans shall define specific tasks, set target dates and designate staff responsible for carrying out the procedures and plans.

(g) Compliance with OAC 450:18-13-1 shall be determined by a review of the ~~following~~ facility ~~facility's~~ target population

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definition; facility policy and procedures; mission statement; written plan for professional services; other stated required documentation; and any other supporting documentation.

## 450:17-13-2. Information analysis and planning

(a) The ~~facility~~ CMHC shall have a defined and written plan for conducting an organizational needs assessment which specifies the methods and data to be collected, to include, but not limited to information from:

- (1) Consumers;
- (2) Governing Authority;
- (3) Staff;
- (4) Stakeholders;
- (5) Outcomes management processes; and
- (6) Quality record review.

(b) The ~~facility~~ CMHC shall have a defined ongoing system to collect data and information on a quarterly basis to manage the organization.

(c) Information collected shall be analyzed to improve consumer services and organizational performance.

(d) The ~~organization~~ CMHC shall prepare an end of year management report, which shall include, but not be limited to:

- (1) an analysis of the needs assessment process, and
- (2) performance improvement program findings.

(e) The management report shall be communicated and made available to, among others:

- (1) the governing authority,
- (2) facility staff, and
- (3) ODMHSAS, ~~as if~~ and when requested.

(f) Compliance with OAC 450:17-13-2 shall be determined by a review of the written program evaluation plan(s); written annual program evaluation(s); ~~special or interim program evaluations~~; program goals and objectives; and other supporting documentation provided.

## SUBCHAPTER 15. PERFORMANCE IMPROVEMENT AND QUALITY MANAGEMENT

### 450:17-15-1.1. Performance improvement program

(a) The ~~facility~~ CMHC shall have an ongoing performance improvement program designed to objectively and systematically monitor, evaluate and improve the quality of consumer care.

(b) The Performance improvement program shall also address the fiscal management of the organization.

(c) The facility shall have an annual written plan for performance improvement activities. The plan shall include, but not be limited to:

- (1) Outcomes management specific to each program component which minimally measures:
  - (A) efficiency,
  - (B) effectiveness, and
  - (C) consumer satisfaction.
- (2) A quarterly quality consumer record review to evaluate and ensure, among others:
  - (A) the quality of services delivered,

- (B) the appropriateness of services,
- (C) patterns of service utilization, ~~and~~
- (D) consumers ~~shall be, among others,~~

~~(+)~~ are provided an orientation to services, and  
~~(+)~~ actively involved in making informed choices regarding the services they receive;

(E) assessments ~~shall be~~ are thorough, timely and complete

(F) treatment goals and objectives ~~shall be~~ are based on, at a minimum,

- (i) assessment findings, and
- (ii) consumer input;

(G) services provided ~~shall be~~ are related to the treatment plan goals and objectives;

(H) services ~~shall be~~ are documented as prescribed by policy; and

(I) the treatment plan ~~shall be~~ is reviewed and updated as prescribed by policy.

(3) Clinical privileging; and

(4) Review of critical and unusual incidents and consumer grievances and complaints.

(d) The ~~facility monitors~~ CMHC shall monitor the implementation of the performance improvement plan on an ongoing basis and makes adjustments as needed.

(e) Performance improvement findings shall be communicated and made available to, among others:

- (1) the governing authority,
- (2) facility staff, and
- (3) ODMHSAS, ~~as requested if~~ and when.

(f) Compliance with 450:17-15-1.1 shall be determined by a review of the written program evaluation plan; written program evaluations (annual and or special or interim; program goals and objectives; and other supporting documentation provided).

## SUBCHAPTER 19. HUMAN RESOURCES

### 450:17-19-3. Utilization of volunteers

(a) In facilities where six or more volunteers are utilized, there shall be an organized volunteer program.

(b) A qualified staff member shall be assigned the role of, or responsibility as, the volunteer coordinator.

(c) The authority and responsibility of the volunteer coordinator shall be described in the written policies and procedures.

(d) The program shall have written volunteer policies and procedures.

(e) Volunteer policies and procedures shall be reviewed (by the governing authority) upon revision.

(f) The volunteer policy and procedure statement shall include:

- (1) A plan for recruitment of volunteers;
- (2) Selection criteria;
- (3) A method for screening volunteers;
- (4) A determination of the agency's need for volunteer services;
- (5) A system for the coordination of recruitment, selection, training and referral of volunteers to specific

assignments, when more than one unit of the facility uses volunteers;

(6) Volunteer assignments which are available in the program, including descriptions of duties to be performed;

(7) Methods of supervision of volunteers.

(g) The programs shall have written goals and objectives for the volunteer coordinator and staff.

(h) There shall be a written orientation program for all volunteers which shall enable them to have knowledge of program goals and familiarity with routine procedures.

(i) The volunteer orientation shall include explanations, at a minimum, of the following:

(1) The importance of maintaining confidentiality and protecting consumer's rights, as well as the legal ramifications of State and Federal regulations concerning confidentiality;

(2) The facility's policies and procedures;

(3) Any other necessary information to ensure that volunteer staff members are knowledgeable enough to carry out the responsibilities of their position;

(4) ~~A statement of the volunteer's potential liability in providing program services;~~ and

(5) Documentation of volunteer's understanding of policies, goals and job.

(j) The volunteer records shall maintain the following:

(1) application;

(2) job description;

(3) verification of current qualifications, as specified in the job description;

(4) assignment record;

(5) record of number of hours worked;

(6) record of participation in training;

(7) a record of service evaluations prepared by the volunteer coordinator; and

(8) a daily assignment schedule, including time of day and unit to which volunteers are assigned.

(k) Compliance with 450:17-19-3 shall be determined by a review of volunteer policies and procedures; designation of a volunteer coordinator; written orientation plan; orientation program; written goals and objectives; volunteer personnel files; and volunteer records.

**SUBCHAPTER 21. STAFF DEVELOPMENT AND TRAINING**

**450:17-21-1. Staff qualifications**

(a) All staff who provide ~~direct~~ clinical services shall have documented qualifications or training specific to the clinical services they provide within the CMHC.

(b) Compliance with 450:17-21-1 shall be determined by a review of staff personnel files and other supporting documentation provided.

**450:17-21-2. Staff development**

(a) ~~There~~ The CMHC shall be have a written plan for the professional growth and development of all administrative, professional and support staff.

(b) This plan shall include, but not be limited to:

(1) orientation procedures;

(2) inservice training and education programs;

(3) availability of professional reference materials; and

(4) mechanisms for insuring outside continuing educational opportunities for staff members.

(c) The results of performance improvement activities, accrediting and audit findings and recommendations shall be addressed by and documented in the staff development and clinical privileging processes.

(d) Staff education and inservice training programs ~~are~~ shall be evaluated by the CMHC at least annually.

(e) Compliance with 450:17-21-2 shall be determined by a review of the staff development plan; ~~clinical privileging processes;~~ documentation of inservice training programs; ~~and~~ other supporting documentation provided.

**450:17-21-3. Inservice Annually required inservice training for all employees**

(a) Inservice presentations shall be conducted annually and are required for all employees on the following topics:

(1) Fire and safety;

(2) AIDS and HIV precautions and infection control;

(3) ~~Creating A Positive Environment (CAPE) or a program approved by DMHSAS with annual updates;~~

(4) Consumer's rights and the constraints of the Mental Health Patient's Bill of Rights.

(5) Confidentiality; and

(6) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101-7115; ~~and;~~

(7) Facility policy and procedures

(b) ~~All employees providing direct care services shall have a current certification in cardiopulmonary resuscitation (CPR).~~

(c) Compliance with 450:17-21-3 shall be determined by a review of inservice training records; personnel records; and other supporting written information provided.

**450:17-21-4. First Aid and CPR training**

(a) The CMHC shall have staff during all hours of operation at each program site who maintains current certification in basic first aid and Cardiopulmonary Resuscitation (CPR).

(b) Compliance with 450:17-21-4 shall be determined by a review of staff training records and other supporting written information, including, but not limited to staff schedules to assure all program sites are continuously staff with staff trained in item (a) above.

**450:17-21-5. CAPE training**

(a) The CMHC shall require all persons providing direct clinical services have training in Creating A Positive Environment (CAPE) with annual updates within six (6) months of being hired.

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(b) In lieu of CAPE, a CMHC may petition DMHSAS Provider Certification for approval to substitute CAPE with a different curriculum that must be published, have similar learning objectives, and incorporate similar number of hours required for staff training. Such petition will have to be approved in writing prior to conducting of any training pursuant to this provision.

(c) Compliance with 450:17-21-5 shall be determined by a review of staff training records and other supporting written information.

### SUBCHAPTER 23. FACILITY ENVIRONMENT

#### 450:17-23-1. Facility environment

(a) ~~The facility~~ CMHC shall meet accreditation, inspection, safety, and building code regulations required by local, state and federal authorities and laws.

(b) ~~Facility~~ CMHC staff shall know the exact location, contents, and use of first aid supply kits and fire fighting equipment. First aid supplies and fire fighting equipment shall be maintained in appropriately designated areas within the facility.

(c) There shall be posted written plans and diagrams noting emergency evacuation routes in case of fire, and shelter locations in case of severe weather.

(d) Facility grounds shall be maintained in a manner to provide a safe environment for consumers, personnel, and visitors.

(e) ~~The Facility Director~~ director of the CMHC or, designee, shall appointment of a safety officer.

(f) The facility ~~has~~ shall have an emergency preparedness program designed to provide for the effective utilization of available resources so that consumer care can be continued during a disaster. The emergency preparedness program is evaluated annually and is updated as needed.

(g) Policies for the use and control of personal electrical equipment ~~are~~ shall be developed and implemented.

(h) There shall be an emergency power system to provide lighting throughout the facility.

(i) ~~Facility Directors~~ The CMHC director shall ensure there is a written plan to cope with internal and external disasters. ~~(External disasters include, but are not limited to, tornados, explosions, and chemical spills.)~~

(j) ~~All facilities~~ The CMHC shall be inspected annually by:

(1) Representatives of the Oklahoma State ~~Health Department~~ Fire Marshall (if required); ~~and~~

(2) Designated fire and safety officials of the municipality who exercise fire and safety jurisdiction in the facility's location.

(k) Compliance with 450:17-23-1 shall be determined by visual observation, ~~;~~ posted evacuation plans, ~~;~~ and a review of policy, procedures and other supporting documentation provided.

### SUBCHAPTER 27. SPECIAL POPULATIONS

#### 450:17-27-1. Americans with disabilities act of 1990

(a) Under Titles 11 and 111 of the ADA, the CMHCs shall comply with the "Accessibility Guidelines for Buildings and Facilities (ADAAG) for alterations and new construction." United States government facilities are exempt for the ADA as they shall comply with the "Uniform Federal Accessibility Standards (UFAS)", effective August 7, 1984. Also available for use in assuring quality design and accessibility is the American National Standards Institute (ANSI) A117.1 "American National Standard for Accessible and Usable Buildings and Facilities."

(b) State and local standards for accessibility and usability may be more stringent than ADA, UFAs, or ANSI A 117.1. The CMHC shall assume responsibility for verification of all applicable requirements and comply with the most stringent standards.

(~~a~~c) The CMHC facility shall have written policy and procedures providing or arranging for services for persons who fall under the protection of the Americans With Disabilities Act of 1990 and provide documentation of compliance with applicable Federal, state, and local requirements. A recommended reference is the "Americans With Disabilities Handbook" published the in U.S. Equal Employment Opportunities Commission and the U.S. Department of Justice.

(~~b~~d) Compliance with 450:17-27-1 shall be determined through a review of facility written policy and procedure; and any other supporting documentation.

[OAR Docket #03-684; filed 4-21-03]

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

### CHAPTER 23. STANDARDS AND CRITERIA FOR COMMUNITY-BASED STRUCTURED CRISIS CENTERS

[OAR Docket #03-685]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 1. General Provisions

450:23-1-2 [AMENDED]

Subchapter 3. CBSCC Services

450:23-3-2 [AMENDED]

450:23-3-3 [AMENDED]

450:23-3-5 [AMENDED]

450:23-3-6 [AMENDED]

450:23-3-7 [AMENDED]

450:23-3-8 [AMENDED]

Subchapter 5. CBSCC Clinical Records

450:23-5-2 [AMENDED]

450:23-5-3 [AMENDED]

450:23-5-4 [AMENDED]

450:23-5-7 [AMENDED]

450:23-5-7.1 [NEW]

450:23-5-8 [AMENDED]

Subchapter 7. Confidentiality

450:23-7-1 [REVOKED]

450:23-7-1.1 [NEW]

450:23-7-2 [REVOKED]

Subchapter 9. Consumer Rights

450:23-9-1 [AMENDED]  
 450:23-9-2 [AMENDED]  
 450:23-9-3 [AMENDED]  
 Subchapter 11. Organizational Management  
 450:23-11-1 [AMENDED]  
 450:23-11-2 [AMENDED]  
 Subchapter 13. Performance Improvement and Quality Management  
 450:23-13-1 [AMENDED]  
 450:23-13-5 [AMENDED]  
 Subchapter 19. Staff Development and Training  
 450:23-19-2 [AMENDED]  
 450:23-19-3 [AMENDED]  
 Subchapter 21. Facility Environment  
 450:23-21-2 [AMENDED]

**AUTHORITY:**

43A O.S. §§ 2-101, 2-202, 3-306 and 3-317; Board of Mental Health and Substance Abuse Services.

**DATES:**

**Comment period:**

January 2, 2003 through February 4, 2003

**Public hearing:**

February 5, 2003

**Adoption:**

February 14, 2003

**Submitted to Governor:**

February 20, 2003

**Submitted to House:**

February 20, 2003

**Submitted to Senate:**

February 20, 2003

**Gubernatorial approval:**

March 31, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 16, 2003.

**Final adoption:**

April 16, 2003

**Effective:**

July 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 7. Confidentiality  
 450:23-7-1 [REVOKED]  
 450:23-7-1.1 [NEW]  
 450:23-7-2 [REVOKED]

**Gubernatorial approval:**

February 27, 2003

**Register publication:**

20 Ok Reg 675

**Docket number:**

03-358

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

In accordance with the Administrative Procedures Act, these rule revisions to Chapter 23 are part of the Department's review of Title 450. These amendments are intended to comply with statutory changes, implement permanent rules addressing the federally mandated Health Insurance Portability and Accountability Act (HIPAA), enhance service provision and delete redundant or superfluous language and correct scrivener's errors.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**450:23-1-2. Definitions**

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

**"Abuse"** means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a resident by a staff responsible for the resident's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a resident.

**"CBSCC"** means a community-based structured crisis center certified by the ODMHSAS for the provision of services.

**"Client"** means **"Consumer,"** as defined in this Section.

**"Clinical privileging"** means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

**"Community-based Structured Crisis Center" or "CBSCC"** means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

**"Consumer"** means an individual who has applied for, is receiving or has received evaluation or treatment services (evaluation or treatment) from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

**"Creating A Positive Environment" or "CAPE"** means a specific curriculum designed by ODMHSAS to train staff in verbal and non-verbal communication techniques in the management of selected and potentially problematic behaviors and to foster attitudes that promote the consumer's dignity and self-esteem in facility treatment settings.

**"Crisis intervention"** means an immediately available service to meet the psychological, physiological and environmental needs of individuals who are experiencing a mental health or substance abuse crisis.

**"Crisis stabilization"** means emergency psychiatric and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment and referral.

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**"Critical incident"** means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

**"Emergency detention"** means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

**"Emergency examination"** means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted.

**"ICIS"** See "Integrated Client Information System."

**"Integrated Client Information System" or "ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

**"Intervention plan"** means a description of services to be provided in response to the presenting crisis situation that incorporates the identified problem(s), strengths, abilities, needs and preferences of the individual served.

**"Licensed mental health professional" or "LMHP"** means:

- (A) psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology;
- (B) a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

- (C) a licensed clinical psychologist;
- (D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;
- (E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;
- (F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;
- (G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or
- (H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.

**"Linkage services"** means the communication and coordination with other service providers that assure timely appropriate referrals between the CBSCC and other providers.

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

**"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

**"Mental Health Professional"** means:

- (A) ~~Physicians with a current license and board certification in psychiatry or board eligible, or a current resident in psychiatry, where the services provided to a DMHSAS funded program are within the scope of the supervised residency program. Other licensed physicians experienced in behavior health counseling practices may be considered, if the facility has verified sufficient training and experience in the areas of practice for which the ICIS service is being reported;~~ or
- (B) ~~Practitioners with a license to practice or those actively and regularly receiving board approved supervision to become licensed by one of the following licensing boards: Psychology, Social Work (clinical specialty), Professional Counselor, or Marriage and Family Therapist; or Licensed Behavioral Practitioners;~~ or
- (C) ~~Advanced Practice Nurse (certified in a psychiatric mental health specialty) licensed as a registered nurse with a current certification of recognition by the Oklahoma State Board of Nursing.~~

**"Performance Improvement" or "PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous performance improvement, continuous improvement, organization-wide performance improvement and total quality management.

**"Persons with special needs"** means any persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf/hearing impaired, visually impaired,

physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

~~"PI" means "performance improvement", as defined in this Section.~~

"Progress notes" mean a chronological description of services provided to a consumer, the consumer's progress, or lack of, and documentation of the consumer's response related to the intervention plan.

"Psychosocial evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

~~"Qualified Service Agreement" means a written, signed agreement between the ODMHSAS and facilities which contract with the ODMHSAS for the provision of mental health, substance abuse and domestic violence and sexual assault services. This agreement permits the transmittal of records and information regarding consumers as appropriate for the care and treatment of said consumers. The information necessary for the diagnosis and treatment of a person may be exchanged between those signatory facilities directly involved in the treatment of a consumer without the individual's consent.~~

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of the individual's body.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Triage" means a dynamic process of evaluating and prioritizing the urgency of crisis intervention needed based on the nature and severity of consumers' presenting situations.

### SUBCHAPTER 3. CBSCC SERVICES

#### 450:23-3-2. Crisis stabilization

(a) ~~Crisis~~ The CBSCC shall provide crisis stabilization ~~shall be provided~~ to individuals who are in crisis as a result of a mental health or substance abuse related problem. The CBSCC must have the capability of providing services to individuals who are in emergency ~~order of~~ detention status.

(b) Crisis stabilization services shall be provided in the least restrictive setting possible, and be accessible to individuals within the community in which they reside.

(c) A physician shall be available at all times for the crisis unit, either on-duty or on call. If the physician is on call, he or she shall respond by telephone or in person to the licensed staff on duty at the crisis unit within 20 minutes.

(d) Crisis stabilization services shall include, but not be limited to, the following service components and each shall have written policy and procedures:

- (1) Triage crisis response;
- (2) Psychiatric crisis stabilization; and
- (3) Drug/alcohol crisis stabilization.

(e) The CBSCC shall have written policy and procedures addressing mechanical restraints, and these shall be in compliance with 450:23-3-6.

(f) Compliance with 450:23-3-2 shall be determined by on-site observation, ~~and~~ a review of the following: clinical records; ICIS information; and the CBSCC policy and procedures.

#### 450:23-3-3. Crisis stabilization, triage response

(a) ~~Triage crisis response services~~ Crisis stabilization services shall provide ~~include~~ include twenty-four (24) hour ~~telephone and face to face crisis assessment, crisis intervention, and referral for crisis stabilization triage response and emergency examination.~~

(b) Qualified staff providing triage crisis response services shall be:

- (1) Clinically privileged ~~in crisis intervention and consumer assessment and evaluation pursuant to the CBSCC's privileging requirements for crisis stabilization services;~~ and
- (2) Knowledgeable about applicable laws, ODMHSAS rules/~~regulations, standards and criteria,~~ facility policy and procedures, and referral sources.

(c) Components of this service shall minimally include the capacity to provide:

- (1) ~~Crisis screening~~ Immediate response, on-site and by telephone;
- (2) On-site ~~crisis assessment and evaluation~~ emergency examination; and
- (3) Referral.

(d) The CBSCC shall have written policy and procedures minimally:

- (1) Providing twenty-four (24) hour, seven (7) days per week, triage crisis response services; and
- (2) Defining methods and required content for documentation of each triage crisis response service provided.

(e) Compliance with 450:23-3-3 shall be determined by a review of the following: clinical privileging records; personnel files and job descriptions; policy and procedures, program description; on-site observation; and clinical documentation of services provided.

#### 450:23-3-5. Crisis stabilization, ~~drug/alcohol drug and alcohol~~ services

(a) ~~Drug/alcohol~~ Drug and alcohol crisis stabilization services shall provide continuous twenty-four (24) hour evaluation, crisis stabilization, and social services intervention for

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consumers experiencing substance ~~abuse use~~-related crises seven (7) days per week.

(b) Licensed registered nurses and other support staff shall be adequate in number to provide care needed by consumers twenty-four (24) hours a day seven (7) days per week.

(c) Services shall be provided by a multidisciplinary team of medical, nursing, social services, and ~~administrative other~~ staff adequate to meet the clinical needs of the individuals served.

(d) Staff members assigned to a medical supervised detoxification component shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs and the implication of those vital signs, and emergency procedures.

(e) Services shall minimally include:

- (1) Medically-supervised observation and evaluation;
- (2) Care and intervention during acute periods of crisis stabilization;
- (3) Medically-supervised detoxification, in compliance with procedures outlined in OAC Title 450, Subchapter 18;
- (4) On-site access to community organizations providing help for substance ~~abuse use~~-related problems; and
- (5) Providing a referral or placement, as indicated by consumer needs.

(f) ~~Drug/alcohol~~ Drug and alcohol crisis stabilization services shall be utilized only after less restrictive community resources have been determined to be inadequate to meet the current needs, related to the use of substances, of the consumer.

(g) Compliance with 450:23-3-5 shall be determined by a review of the following: personnel files; ICIS information; policy and procedures; critical incident reports; staffing; census; and by on-site observation.

### 450:23-3-6. Mechanical restraints

(a) Mechanical restraints shall not be used on a non-consenting individual unless a licensed CBSCC physician personally examines the individual and determines their use to be required for the safety and protection of the consumer or other persons. This shall not prohibit the emergency use of restraint pending notification of the physician.

(b) The CBSCC shall have a written protocol for the use of mechanical restraints which includes, but is not limited to:

- (1) Criteria to be met prior to authorizing the use of mechanical restraints;
- (2) Signature of the licensed physician authorizing use is required;
- (3) Time limit of said authorizations;
- (4) Circumstances which automatically terminate an authorization;
- (5) Setting a time period, not to exceed every fifteen (15) minutes, an individual in mechanical restraints shall be observed and checked by a designated staff under the on-site supervision of a registered nurse;
- (6) Requiring in every use of mechanical restraints documentation the specific reason for such use, the actual start and stop times of use, authorizing licensed CBSCC physician signature, and record of times the consumer was observed and checked and by whom;

(7) ~~The CBSCC shall maintain a~~ A chronological log including the name of every consumer placed in mechanical restraints, and the occurrence date. In accordance with 43 A O.S. § 4-106, the CBSCC director, or designee shall be responsible for insuring compliance with record keeping mandates;

(8) A process of peer review to evaluate use of mechanical restraints; and

(9) The items listed in (1) through (6) of this rule shall be made a part of the consumer record.

(c) Compliance with 450:23-3-6 shall be determined by on-site observation; and a review of the following: CBSCC policy and procedures; the mechanical restraint log; seclusion and restraint logs; clinical record; critical incident reports; and any other supporting CBSCC documentation.

### 450:23-3-7. Referrals to inpatient psychiatric hospitals

(a) Persons needing mental health services shall be treated with the least restrictive clinically appropriate methods.

(b) Therefore, all persons referred by CBSCCs to inpatient psychiatric hospitals shall be ~~pre-screened~~ evaluated by the CBSCC prior to referral; such referral shall involve the following:

- (1) Qualified CBSCC staff shall perform the crisis intervention and referral process to the hospital.
- (2) Referral to the hospital by the CBSCC shall occur only after all other less restrictive community resources have been discussed with the individual and the individual's family as indicated and upon written authorization by the individual.
- (3) The CBSCC shall notify referral hospital(s) prior to referring non-emergency consumers.

(c) If the CBSCC is referring the consumer to a state-operated inpatient facility, the consumer must meet the criteria in OAC 450:30-9-3 and the CBSCC must comply with OAC 450:30-9-4.

(d) Compliance with 450:23-3-7 shall be determined by a review of the following: clinical records; psychiatric hospital information and admission records as applicable; ICIS consumer data; and PI monitoring information as available from both the CBSCC and the psychiatric inpatient hospital.

### 450:23-3-8. Services to homeless individuals

(a) The CBSCC shall provide linkage services pursuant to a valid written authorization to adults who are homeless and have a serious mental illness or are experiencing a substance ~~abuse use~~ related crisis.

(b) The CBSCC shall provide the following referral services to such homeless individuals:

- (1) Linkage and contacts with local emergency services including shelters and homeless project coordinators at designated community mental health centers.
- (2) Referrals to income benefit programs, local housing authorities, community food banks, among other services; and

- (c) The CBSCC shall have policy and procedures for guidelines to these referral services.
- (d) Compliance with 450:23-3-8 shall be determined by ~~a review of the following:~~ on-site observation; and review of the following: documentation of linkage activities and agreements; clinical records; ICIS reporting data; and, CBSCC policy and procedures; ~~and use of Homeless Flex Funds.~~

**SUBCHAPTER 5. CBSCC CLINICAL RECORDS**

**450:23-5-2. Basic requirements**

(a) ~~Each CBSCC shall have documentation and operational methods requiring the following. The CBSCC's policies and procedures shall:~~

- (1) ~~All consumer records shall contain the defined required documentation.~~ define the content of the consumer record in accordance with 450:23-5-4 through 23-5-9;
- (2) ~~A CBSCC shall have defined storage, retention and destruction requirements for consumer records;~~ define storage, retention and destruction requirements for consumer records;
- (3) ~~Consumer records shall be contained within~~ require consumer records be confidentially maintained in locked equipment which shall be maintained under locked, secure measures;
- (4) ~~All~~ require legible entries in consumer records ~~shall be legible,~~ signed with first name or initial, last name, and dated by the person making the entry;
- (5) ~~Minimally, the~~ require the consumer's name ~~shall be typed or written on each sheet of paper or document page in the consumer record;~~
- (6) ~~Before any person can be admitted for treatment on a voluntary basis, require~~ a signed consent for treatment ~~shall be obtained before the consumer is admitted on a voluntary basis; and~~
- (7) ~~A~~ require a signed consent for follow-up ~~shall be obtained before any contact after discharge can be is made.~~

(b) Compliance with 450:23-5-2 shall be determined by on-site observation; and a review of the following: CBSCC policy, procedures; ~~or~~ and operational methods; clinical records; other CBSCC provided documentation; and PI information and reports.

**450:23-5-3. Record access for clinical staff**

The CBSCC shall assure consumer records are readily accessible to the CBSCC staff directly caring for the consumer. Such access shall be limited to the minimum necessary to carry out the staff member's job functions or the purpose for the use of the records. Compliance with 450:23-5-3 shall be determined by on-site observation; ~~and~~ staff interviews.

**450:23-5-4. Clinical record content, intake and assessment**

- (a) The CBSCC shall assess each individual to determine appropriateness of admission.
- (b) Consumer intake information shall contain, but not be limited to; the following identification data:
  - (1) ~~Identification data:~~

- ~~(A)~~ Consumer name;
- ~~(2B)~~ Home address;
- ~~(3C)~~ Telephone number;
- ~~(4D)~~ Referral source;
- ~~(5E)~~ Reason for referral;
- ~~(6F)~~ Significant other to be notified in case of emergency;
- ~~(7G)~~ ICIS intake data core content; and
- ~~(8H)~~ Presenting problem and disposition.
- ~~(9I)~~ A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities shall be obtained during intake and kept in a highly visible location in or on the record.

(c) Consumer assessment information for admitted consumers shall be completed within 72 hours of admission to the CBSCC and shall contain, but not be limited to, the following:

- (1) Psychosocial evaluation that minimally addresses:
  - (A) The consumer's strengths and abilities to be considered during community re-entry;
  - (B) Economic, vocational, and spiritual issues, as indicated; and
  - (C) An initial discharge plan.
- (2) Interpretive summary of relevant assessment findings that results in the development of an intervention plan;
- (3) An intervention plan that minimally addresses the consumer's:
  - (A) Presenting crisis situation that incorporates the identified problem(s);
  - (B) Strengths and abilities;
  - (C) Needs and preferences; and
  - (D) Goals and objectives.

(d) Compliance with 450:23-5-4 shall be determined by a review of the following: intake assessment instruments and other intake documents of the CBSCC; clinical records; and, other agency documentation of intake materials or requirements.

**450:23-5-7. Medication record**

(a) The CBSCC shall maintain a medication record on all consumers who receive medications or prescriptions in order to provide a concise and accurate record of the medications the consumer is receiving or ~~having~~ has been prescribed for the consumer.

(b) The consumer record shall contain a medication record with information on all medications ordered or prescribed by physician staff which shall include, but not be limited to:

- (1) The record of medication administered, dispensed or prescribed shall include all of the following:
  - (A) Name of medication,
  - (B) Dosage,
  - (C) Frequency of administration or prescribed change,
  - (D) Route of administration, and
  - (E) Staff member who administered or dispensed each dose, or prescribing physician; and
- (2) A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities shall be

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updated when required by virtue of new information, and kept in a highly visible location in or on the record.

(c) Compliance with 450:23-5-7 shall be determined by a review of medication records in clinical records; and a review of clinical records.

## **450:23-5-7.1. Aftercare and discharge planning**

(a) Aftercare and discharge planning is to be initiated for the consumer at the earliest possible point in the crisis stabilization service delivery process.

(b) The program will have designated staff with responsibility to initiate discharge planning.

(c) Referral and linkage procedures shall be in place so staff can adequately advocate on behalf of the person served as early as possible during the stabilization treatment process to transition to lesser restrictive or alternative treatment settings, as indicated.

(d) Compliance with 450:23-5-7.1 shall be determined by a review of closed consumer records, policies and procedures, and interviews with referral contacts.

## **450:23-5-8. Aftercare and discharge summary**

(a) An aftercare plan shall be entered into each consumer's record upon discharge from the CBSCC. A copy of the plan shall be given to the consumer, as well as to any facility designated to provide follow-up with a valid written authorization by the consumer.

(b) An aftercare plan shall include a summary of progress made toward meeting the goals and objectives of the intervention plan, as well as an overview of psychosocial considerations at discharge, and recommendations for continued follow-up after release from the CBSCC.

(c) The aftercare plan shall minimally include:

- (1) Presenting problem at intake;
- (2) Physical status and ongoing physical problems;
- (3) Medications prescribed at discharge;
- (4) Medication and lab summary, when applicable;
- (5) Names of family and significant other contacts;
- (6) Any other considerations pertinent to the consumer's successful functioning in the community;
- (7) Consumer's comments on participation in his or her crisis resolution efforts; and
- (8) The intervention team members' credentials and of the staff members treating the consumer and their dated signatures.

(d) Compliance with 450:23-5-8 shall be determined by a review of closed consumer records.

## **SUBCHAPTER 7. CONFIDENTIALITY**

### **450:23-7-1. Confidentiality, mental health consumer information and records [REVOKED]**

~~(a) Consumer records and clinical information are confidential, and are protected under the provisions of 43A O.S. §§ 1-109, 3-422 and 3-423; 63 O.S. § 1-502.2 and (U.S.) 42 CFR,~~

~~Part 2. The CBSCC shall have policy and procedures protecting this confidentiality which shall be communicated to the consumer including, but not limited to:~~

~~(1) Consumer records and all communications between consumer and doctor or psychotherapist are privileged and confidential, with such information limited to entities actively engaged in treatment of the consumer or related administrative tasks.~~

~~(2) Privileged and confidential information shall not be released to any person or entity not involved in the consumer's treatment without the written, informed consent of the consumer, or his or her guardian, or parent of a minor child, or a private or public child care agency having legal custody of the minor child.~~

~~(3) Identifying information shall be released without the consent required in 450:23-7-1(a)(2) under any of the following conditions:~~

~~(A) When required to fulfill any statutorily required reporting of child abuse pursuant to the Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101-7115.0, or of abuse of elderly or incapacitated adults pursuant to 43A O.S. § 10-104. All treatment staff shall have a general knowledge of the provisions of these laws. The Child Abuse Reporting and Prevention Act applies only to initial reports of child abuse or neglect, and not to requests for additional information or records. Thus, court orders are still required before records may be used to initiate or substantiate any criminal charges against a consumer, or to conduct any investigation of a consumer.~~

~~(B) Release is required as provided by 10 O.S. §§ 7005-1.1 through 7005-1.3.~~

~~(C) On the order of a court of competent jurisdiction.~~

~~(D) Between holders of contracts with ODMHSAS having signed a qualified service agreement (43A O.S. § 1-109(A)(2)), as provided by said contract. These facilities shall have policy and procedures to permit transmittal of records and information regarding the care and treatment of a specific consumer as necessary and appropriate between them or ODMHSAS, or another contracted holder of a qualified service agreement.~~

~~(4) The manner of personal access of a present or former consumer to his or her records shall conform to the provisions of 43A O.S. § 1-109(B).~~

~~(5) With the consent of the consumer, information may be provided to responsible family members as provided for and limited in 43A O.S. § 1-109(C)(1 through 5).~~

~~(6) The reviews of records by state or federal licensing, accrediting, certifying, or funding agencies may occur to verify services, or CBSCC compliance with statutes and regulations.~~

~~(7) A written consent for release of confidential information form shall be used, which contains and encompasses:~~

~~(A) The consumer being informed of the reason and need for the information release, the specific information to be released, and the period of time covered by the information to be released.~~

~~(B) The consumer being informed that treatment services are not contingent upon, or influenced by, his/her decision to permit the information release.~~

~~(C) The consumer's consent being given freely and voluntarily.~~

~~(D) The following information shall appear on the consent to release of confidential information form:~~

~~(i) The name and address of the facility making the disclosure of information; and the name and title of the person completing the disclosure.~~

~~(ii) The name of the person, title (if any), and name of the organization (if any) to which the information is being supplied.~~

~~(iii) The name of the consumer.~~

~~(iv) The exact extent of information being disclosed.~~

~~(v) The length of time the consent will remain valid unless otherwise revoked, in writing, by the consumer.~~

~~(vi) Signature of the consumer, or legal guardian, and the date of such signature.~~

~~(vii) Notice in bold face type stating, "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS) [63 O.S. § 1-1502(B)]"~~

~~(b) In addition, the CBSCC shall have policy and procedures which shall:~~

~~(1) Limit access to records to persons with a need to know;~~

~~(2) Provide for the safe storage of consumer records under lock and key; and~~

~~(3) Provide for stated periods of retention of closed consumer records, and subsequent disposition of the records.~~

~~(c) Compliance with 450:23-7-1 shall be determined by a review of CBSCC policy and procedures; CBSCC forms; consumer record reviews; interviews with staff and consumers; and any other supporting CBSCC documentation.~~

**450:23-7-1.1. Confidentiality of mental health and drug or alcohol abuse treatment information**

(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless a state or federal law exception applies.

(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:

(1) an acknowledgment that all mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;

(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;

(5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws and

(6) a procedure by which to notify a consumer of his or her right to confidentiality.

(c) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:

(1) the name of the person or program permitted to make the disclosure;

(2) the name or title of the person or the name of the organization to which disclosure is to be made;

(3) the name of the consumer whose records are to be released;

(4) a description of the information to be disclosed;

(5) the specific reason for the disclosure;

(6) the signature of the consumer or the consumer's legally authorized representative;

(7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;

(8) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;

(9) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;

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(10) a confidentiality notice which complies with state and federal law; and

(11) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)."

(d) Compliance with 450:19-5-10 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.

## **450:23-7-2. Confidentiality, substance abuse consumer information and records [REVOKED]**

~~The rules governing confidentiality of records of consumers for whom substance abuse is a focus of the evaluation and treatment are set forth in OAC Title 450, subchapter 18 and shall be complied with, as particular federal regulations (42 CFR, Part 2) apply to the release of information regarding substance abuse consumers and their records.~~

## **SUBCHAPTER 9. CONSUMER RIGHTS**

### **450:23-9-1. Consumer rights, Community-based Structured Crisis Center**

(a) All consumers shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Each CBSCC either operated by, certified by, or under contract with ODMHSAS providing CBSCC services shall insure consumers have the rights specified as follows:

(1) All consumers have the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.

(2) All consumers have the right to receive services in a safe, sanitary and humane environment.

(3) All consumers have the right to a humane psychological environment protecting them from harm, abuse, and neglect.

(4) Each consumer has the right to an environment which provides reasonable privacy promotes personal dignity.

(5) Each consumer has the right to receive treatment services suited to his/her his or her and needs for treatment without regard to his/her his or her race, religion, sex, ethnic origin, age, degree of disability, handicapping condition, legal status, pay source or ability to pay for the services.

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

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

(8) Each consumer has the right to uncensored, private communications including, but not limited to, telephone calls, and personal visits.

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

(10) Each consumer has the right to be treated in the least restrictive environment (level of care), and to have the maximum freedom of movement consistent with the clinical condition and legal status of the consumer.

(11) Each consumer has the right to easy access to his or her personal funds on deposit with the CBSCC, and shall be entitled to an accounting for said funds. A limitation on access to such funds may be made when it is determined, and documented, as essential to prevent the consumer from unreasonably and significantly dissipating ~~his/her~~ his or her assets.

(12) Each consumer has the right to have ~~his/her~~ his or her own clothing and personal possessions. This right may be forfeited, or limited, only if the personal property is determined to be potentially dangerous to the consumer, or others, or if the property is determined to be functionally unsafe or illegal contraband.

(13) Each consumer shall have the right to practice ~~his/her~~ his or her own religious beliefs, and afforded the opportunity for religious worship. No consumer shall ever be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.

(14) Each consumer has the right to be provided with prompt, competent, appropriate treatment services and an individualized intervention plan.

(A) The consumer shall be afforded the opportunity to participate in ~~his/her~~ his or her intervention plan.

(B) The consumer may consent, or refuse to consent, to the proposed treatment.

(C) The consumer's right to consent, or refuse to consent, may be abridged for those clients adjusted incapacitated by a court of competent jurisdiction, and in emergency situations where the consumer, or others, are in imminent danger.

(D) When the consumer ~~permits~~ authorizes, the consumer's family or significant others shall be involved in the treatment and treatment planning.

(15) The records of each consumer shall be treated in a confidential manner.

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

(17) A consumer being discharged shall have plans for outpatient treatment, sufficient medication, suitable clothing for the season, housing information and referral; and, if the consumer ~~permits~~ authorizes, family or significant others' involvement in the discharge plan.

(18) Each consumer shall have the right to establish and to participate in a consumer committee, or consumer government, by ward, unit, any other administrative consumer unit, or facility-wide.

(19) Each consumer has the right to request the opinion of an outside medical or psychiatric consultant, at the expense of the consumer; or the right to an internal CBSCC consultation at no cost to the consumer or both.

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

(21) No consumer shall ever be retaliated against, or subject to, any adverse conditions or treatment services solely or partially because of having asserted ~~his/her~~ his or her rights as aforesated in this section.

(b) Each affected CBSCC shall have written policy and implementing procedures, and shall provide documented staff training to insure the implementation of each and every consumer right stated in this section.

(c) Each affected CBSCC shall have written policy and implementing procedures to insure each consumer enjoys, and has explained to him or her, these rights; and these rights are visibly posted in both consumer and public areas of the CBSCC.

(d) Compliance with 450:23-9-1 shall be determined by review of the following: consumer rights (~~outpatient services~~); interviews with staff and clients; review of grievances by clients or others; and any other supporting CBSCC documentation.

**450:23-9-2. Consumers' grievance policy**

(a) Each CBSCC shall have a written Consumers' Grievance Policy providing ~~for, which includes~~ but is not limited to, the following:

(1) Written notice of the procedure provided to the consumer; and, if involved with the consumer, to family members or significant others.

(2) Notice to the consumer of his or her right to make a complaint to the Office of Consumer Advocacy;

(3) Time frames for the grievance policy's procedures which allow for expedient resolution, of the grievance within a maximum of five (5) working days.

(~~3~~4) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authorized to make decisions for resolution of the grievance. In the instance where the decision maker is the subject of a grievance, decision making authority shall be delegated.

(~~4~~5) Procedure by which a notice is provided to the resident advising that he or she has a right to make a complaint to the ODMHSAS Office of Consumer Advocacy an individual may appeal the outcome.

(~~5~~6) Mechanism to monitor the grievance process and improve performance based on outcomes.

(~~6~~7) Annual review of the grievance policy and its implementing procedures, with revisions as needed to improve.

(b) Compliance with 450:23-9-2 shall be determined by a review of the following:

(~~1~~) a review of the CBSCC's grievance policy and implementing procedures;

(~~2~~) posted notices of consumer rights;

(~~3~~) interviews with staff and consumers;

(~~4~~) review of the CBSCC's records of grievances filed by consumers or family and significant others; and

(~~5~~) any other supporting CBSCC documentation.

**450:23-9-3. ODMHSAS advocate general**

The ODMHSAS ~~Advocate General~~ Office of Consumer Advocacy, in any investigation or program monitoring regarding consumer rights shall have access to clients, CBSCC records and CBSCC staff as set forth in OAC Title 450, subchapter 15.

**SUBCHAPTER 11. ORGANIZATIONAL MANAGEMENT**

**450:23-11-1. Organizational description**

(a) The CBSCC shall have a written organizational description which is reviewed annually and minimally includes:

(1) The overall target population for whom services will be provided;

(2) The overall mission statement;

(3) The CBSCC's annual goals and objectives;

(b) The CBSCC's governing ~~authority~~ body shall approve the mission statement and annual goals and objectives and document their approval.

(c) ~~There shall be documentation verifying these documents are~~ The CBSCC shall make the organizational description, mission statement and annual goals and objectives available to staff.

(d) ~~There shall be documentation verifying these documents are~~ The CBSCC shall make the organizational description, mission statement and annual goals and objectives available to the general public upon request.

(e) Each CBSCC shall have a written plan for professional services which shall have in writing the following:

(1) Services description and philosophy;

(2) The identification of the professional staff organization to provide these services;

(3) Written admission and exclusionary criteria to identify the type of clients for whom the services are primarily intended; and

(4) Written goals and objectives.

(f) There shall be a written statement of the procedures/plans for attaining the organization's goals and objectives. These procedures/plans should define specific tasks, set target dates and designate staff responsible for carrying out the ~~procedures/plans~~ procedures or plans.

(g) Compliance with 450:23-11-1 shall be determined by a review of the following: CBSCC target population definition; CBSCC ~~policy/procedures~~ policy and procedures; mission statement; written plan for professional services; other stated

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required documentation; and any other supporting documentation.

## 450:23-11-2. Information Analysis and Planning

(a) The CBSCC shall have a defined plan for conducting an organizational needs assessment ~~which~~ that specifies the methods and data to be collected, ~~to which shall include,~~ but not limited to information from:

- (1) Clients;
- (2) Governing Authority;
- (3) Staff;
- (4) Stakeholders;
- (5) Outcomes management processes; and
- (6) Quality record review.

(b) The CBSCC shall have a defined system to collect data and information on a quarterly basis to manage the organization.

(c) Information collected shall be analyzed to improve consumer services and organizational performance.

(d) The CBSCC shall prepare an end of year management report, which shall include, but not be limited to:

- (1) An analysis of the needs assessment process; and
- (2) Performance improvement program findings.

(e) The management report shall be communicated and made available to, among others:

- (1) The governing authority;
- (2) CBSCC staff; and
- (3) ODMHSAS, as if and when requested.

(f) Compliance with 450:23-11-2 shall be determined by a review of the following: written program evaluation plan(s); written annual program evaluation(s); special or interim program evaluations; program goals and objectives; and other supporting documentation provided.

## SUBCHAPTER 13. PERFORMANCE IMPROVEMENT AND QUALITY MANAGEMENT

### 450:23-13-1. Performance improvement program

(a) ~~There~~ The CBSCC shall ~~be~~ have an ongoing performance improvement program designed to objectively and systematically monitor, evaluate and improve the quality of consumer care.

(b) ~~Fiscal management.~~ The Performance improvement program shall also address the fiscal management of the organization.

(c) There shall be an annual written plan for performance improvement activities. The plan shall include, but not be limited to:

- (1) Outcomes management processes specific to each program component minimally measuring:
  - (A) efficiency;
  - (B) effectiveness; and
  - (C) consumer satisfaction.
- (2) A quarterly record review to minimally assess:
  - (A) quality of services delivered;
  - (B) appropriateness of services;

(C) patterns of service utilization;

(D) consumers, relevant to:

- (i) their orientation to the CBSCC and services being provided; and
- (ii) their active involvement in making informed choices regarding the services they receive;

(E) ~~the assessments'~~ consumer assessment information thoroughness, timeliness and completeness;

(F) treatment goals and objectives are based on:

- (i) assessment findings; and
- (ii) consumer input;

(G) services provided were related to the goals and objectives;

(H) services are documented as prescribed by policy;

(I) the treatment plan is reviewed and updated as prescribed by policy;

(3) Clinical privileging;

(4) Fiscal management and planning, which shall include:

(A) ~~The organization's performance improvement activities shall include the fiscal planning of the organization, including an annual budget that is approved by the governing authority and reviewed at least annually;~~

(B) ~~Performance improvement activities shall address the organization's capacity to generate needed revenue to produce desired consumer and other outcomes;~~

(C) ~~Performance improvement activities shall monitor monitoring consumer records to ensure among others, documented dates of services provided coincide with billed service encounters; and,~~

(5) Review of critical incident reports and consumer grievances or complaints.

(d) The CBSCC shall monitor the implementation of the performance improvement plan on an ongoing basis and makes adjustments as needed.

(e) Performance improvement findings shall be communicated and made available to, among others:

- (1) the governing authority;
- (2) CBSCC staff; and
- (3) ODMHSAS, as if and when requested.

(f) Compliance with 450:23-13-1 shall be determined by a review of the following: written program evaluation plan; written program evaluations annual, special or interim; program goals and objectives; and other supporting documentation provided.

### 450:23-13-5. Incident reporting

(a) ~~There~~ The CBSCC shall ~~be~~ have written policies and procedures requiring documentation and reporting of critical incidents.

The documentation for critical incidents shall contain, minimally:

- (1) the facility name and name and signature of person(s) reporting the incident;

- (2) the name of consumer(s), staff person(s), or others involved in the incident;
  - (3) the time, place and date the incident occurred;
  - (4) the time and date the incident was reported and name of the person to whom it was reported;
  - (5) description of the incident; and
  - (6) ~~The~~ the severity of each injury, if applicable. Severity shall be indicated as follows:
    - (A) No off-site medical care required or first aid care administered on-site;
    - (B) Medical care by a physician or nurse or follow-up attention required; or
    - (C) Hospitalization or immediate off-site medical attention was required;
  - (7) Resolution or action taken, date action taken, and signature of CBSCC director.
- (c) The CBSCC shall report those critical incidents to ODMHSAS that include.
- (1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to ODMHSAS Provider Certification within twenty-four (24) hours of the incident being documented.
  - (2) Critical incidents involving allegations constituting a sentinel event or resident abuse shall be reported to ODMHSAS immediately via telephone or fax, but not less than twenty-four (24) hours of the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours.
- (d) Compliance with 450:23-13-5 shall be determined by a review of ~~policy/procedures~~ policy and procedures; and critical incident reports at the CBSCC and those submitted to ODMHSAS.

**SUBCHAPTER 19. STAFF DEVELOPMENT AND TRAINING**

**450:23-19-2. Staff development**

- (a) The CBSCC shall have a written plan for the professional growth and development of all administrative, professional clinical and support staff.
- (b) This plan shall include, but not be limited to:
  - (1) orientation procedures;
  - (2) inservice training and education programs;
  - (3) availability of professional reference materials; and
  - (4) mechanisms for insuring outside continuing educational opportunities for staff members.
- (c) The results of performance improvement activities and accrediting and audit findings and recommendations shall be addressed by and documented in the staff development and clinical privileging processes.
- (d) Staff education and inservice training programs ~~are~~ shall be evaluated by the CBSCC at least annually.
- (e) Compliance with 450:23-19-2 shall be determined by a review of the staff development plan, clinical privileging

processes, documentation of inservice training programs, and other supporting documentation provided.

**450:23-19-3. Inservice**

- (a) ~~Inservice presentations shall be conducted yearly and shall be required~~ trainings are required annually for all employees who provide clinical services within the CBSCC program on the following topics:
  - (1) Fire and safety;
  - (2) Infection Control and universal precautions;
  - (3) ~~Creating A Positive Environment (CAPE) training or similar programs.~~
  - (4) Consumer's rights and the constraints of the Mental Health Consumer's Bill of Rights;
  - (5) Confidentiality;
  - (6) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101 et seq. and Protective Services for the Elderly and for Incapacitated Adults Act, 43A O.S. §§ 10-101 et seq.;
  - (7) Facility policy and procedures; and
  - (8) Cultural diversity.
- (b) All staff providing clinical direct care services shall have a current certification in basic first aid and in Cardiopulmonary Resuscitation (CPR).
- (c) All clinical staff shall have training in Creating A Positive Environment (CAPE) within three (3) months of being hired with annual updates thereafter.
- (d) In lieu of CAPE, a CBSCC may petition DMHSAS Provider Certification for approval to substitute CAPE with a different curriculum that must be published, have similar learning objectives, and incorporate similar number of hours required for staff training. Such petition will have to be approved in writing prior to conducting of any training pursuant to this provision.
- (e) Compliance with 450:23-19-3 shall be determined by a review of the following: inservice training records; personnel records; and other supporting written information provided.

**SUBCHAPTER 21. FACILITY ENVIRONMENT**

**450:23-21-2. Medication clinic, medication monitoring**

- (a) Medication administration; storage and control; and consumer reactions shall be ~~consistently~~ continuously monitored.
- (b) CBSCCs shall assure proper storage and control of medications, immediate response if incorrect or overdoses occur, and have appropriate emergency supplies available if needed.
  - (1) Written procedures for medication administration shall be available and accessible in all medication storage areas, and available to all staff authorized to administer medications.
  - (2) All medications shall be kept in locked, non-consumer accessible areas. ~~Conditions—Factors~~ which shall be considered in medication storage are light, moisture, sanitation, temperature, ventilation, and the segregation and safe storage of poisons, external medications, and internal medications.

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- (3) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed, or administered, or stored.
- (4) A CBSCC physician shall supervise the preparation and stock of an emergency kit which shall be readily available, but accessible only to CBSCC staff.
- (c) Compliance with 450:23-21-2 shall be determined by on-site observation; and a review of the following: written policy and procedures; clinical records; and PI records.

[OAR Docket #03-685; filed 4-21-03]

## TITLE 545. BOARD OF PODIATRIC MEDICAL EXAMINERS CHAPTER 15. EXAMINATION/~~PRECEPTORSHIP/~~ LICENSURE

[OAR Docket #03-735]

### **RULEMAKING ACTION:** PERMANENT final adoption.

### **RULES:**

- 545:15-1-1. Purpose [AMENDED]  
545:15-1-2. Examination [AMENDED]  
545:15-1-3.1. Direct supervision of an applicant [REVOKED]  
545:15-1-6. Qualifications for a preceptee [REVOKED]  
545:15-1-7. Qualifications for a preceptor [REVOKED]  
545:15-1-8. Course of study for preceptee [REVOKED]  
545:15-1-9. Progress review of preceptee [REVOKED]

### **AUTHORITY:**

Title 59 O.S., Section 141, Board of Podiatric Medical Examiners

### **DATES:**

#### **Comment period:**

January 2, 2003 to February 14, 2003

#### **Adoption:**

February 22, 2003

#### **Submitted to Governor:**

February 25, 2003

#### **Submitted to House:**

February 25, 2003

#### **Submitted to Senate:**

February 25, 2003

#### **Gubernatorial approval:**

April 10, 2003

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 22, 2003.

#### **Final adoption:**

April 22, 2003

#### **Effective:**

June 5, 2003

### **SUPERSEDED EMERGENCY ACTIONS:**

#### **Superseded rules:**

- 545:15-1-1. Purpose [AMENDED]  
545:15-1-2. Examination [AMENDED]  
545:15-1-3.1. Direct supervision of an applicant [REVOKED]  
545:15-1-6. Qualifications for a preceptee [REVOKED]  
545:15-1-7. Qualifications for a preceptor [REVOKED]  
545:15-1-8. Course of study for preceptee [REVOKED]  
545:15-1-9. Progress review of preceptee [REVOKED]

#### **Gubernatorial approval:**

June 13, 2002

#### **Register publication:**

19 Ok Reg 2780

#### **Docket number:**

02-1242

### **INCORPORATED BY REFERENCE:**

n/a

### **ANALYSIS:**

The rules regarding the state examination and qualifications for licensure were amended to comply with changes in the law pursuant to SB 928, effective November 1, 2002.

### **CONTACT PERSON:**

Jan Ewing, Deputy Director, (405) 848-6841, ext. 104

## **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 JUNE 5, 2003:**

### **545:15-1-1. Purpose**

The rules of this Chapter govern examination, ~~preceptorship~~ and licensure to practice podiatry in the State of Oklahoma.

### **545:15-1-2. Examination**

(a) Examination for licensure to practice podiatry in the State of Oklahoma shall be given by the Board.

(b) The Board may give the examination at any special meeting, but it shall not be required to do so.

(1) In general, the examination for licensure shall be given during the month of ~~June~~ March on an annual basis.

(2) ~~Repeat examinations for failed portions of the exam will be given at the next regularly scheduled meeting of the Board, but no less than ninety (90) days following the June examination.~~

(3) Any person who fails ~~five (5) or more parts of the examination~~ and who still seeks licensure shall be required to sit for the entire examination in ~~June~~ March of the following year.

(c) Applicants shall file a written application for examination as required by the Board and pay, in advance, the fee for examination.

(1) The application must be received no later than the ~~30th~~ 31st day of ~~March~~ January of the year in which the exam is to be administered.

(2) The application fee must be submitted in the form of a cashier's check or certified check with the completed application form.

(3) If the application for examination is unacceptable, the fee shall be returned to the candidate along with the application.

(4) If the application is deemed acceptable, the candidate shall be notified of same in writing and scheduled for examination. The application fee shall be deposited with the office of the State Treasurer of the State of Oklahoma and shall at that point become non-refundable.

(d) Any person who is otherwise qualified for licensure shall receive a license to practice podiatry in this State who:

(1) ~~Takes the examination as administered by the Board and receives a general average of at least 75% and not less than 65% in each subject upon which examined, provided, that:~~ Takes the examination as administered by

the Board and receives a passing score of at least 75% on both the written and the oral portions. Any applicant receiving less than a 75% score on either the written or oral portions of the examination shall be deemed as having failed the entire examination, and

~~(A) Any applicant receiving less than 65% on five (5) or more areas of the examination shall be deemed as having failed the entire examination and not eligible to sit for make-up examinations, and~~

~~(B) Any applicant receiving 65% in less than five (5) areas of the examination may sit for reexamination only in those subjects which were failed, at the next regularly scheduled session of the Board.~~

(2) Observes the practice of podiatry in this State and actually assists therewith or serves as an intern or resident in conformity with the requirements of a college of podiatric medicine accredited by the Board. Satisfactorily completes a podiatric surgical residency, approved by the Council of Podiatric Medical Education of the American Podiatric Medical Association, of not less than three hundred sixty-five (365) days.

~~(A) An internship, residency or preceptorship program of not less than three hundred and sixty five (365) days shall be required as approved in advance by the Oklahoma State Board of Podiatry, prior to issuance of a license.~~

~~(B) One who does not so satisfy the Board of the completion of this internship, residency or preceptorship program within twenty four (24) months after taking and passing the examination shall be required to retake the entire examination prior to receiving a license to practice in this State.~~

(e) The examination shall include a written, oral and clinical portions an oral portion. In addition, it shall be administered in the English language.

(f) The examination shall cover the following areas (\* denotes basic science courses):

- (1) Anatomy
- (2) Histology\*
- (3) Physiology\*
- (4) Bacteriology\*
- (5) Chemistry\*
- (6) Diagnosis and treatment
- (7) Pathology
- (8) Surgery
- (9) Dermatology
- (10) Hygiene
- (11) Pharmacy and therapeutics
- (12) Clinical and orthopedic podiatry
- (13) Anesthesia
- (14) Asepsis
- (15) Radiology
- (16) Oklahoma law relating to podiatry. The examination shall cover areas in anatomy, podiatric medicine and surgery, pathology, dermatology, pharmacology, biomechanics, anesthesia, radiology, Oklahoma law relating to podiatry and any other areas deemed relevant by the Board.

~~(g) At the discretion of the Board, the Basic Science examination may be deferred, provided the applicant shows proof of a passing score of at least eighty percent (80%) on the National Board of Podiatry Examiners examination.~~

~~(h) The Board hereby authorizes examination papers to be graded by one or more of its' own members or by any one or more licensed podiatrist it shall select at a meeting of the Board.~~

~~(ih) The Board further may employ any national examination administered by any person or entity approved by the Council on Podiatric Medical Education to administer any such examination in their behalf; so long as such examination covers subjects required by 59 O.S., section 144.~~

**545:15-1-3.1. Direct supervision of an applicant [REVOKED]**

~~(a) An applicant for licensure by examination who has successfully passed the written and oral examination given by the Board may practice podiatry to the extent necessary to enable him or her to observe and assist as authorized by the Act. Provided, however, that it shall be the duty of such an applicant to comply with all appropriate rules of the Board.~~

~~(b) The practice of podiatry under this exception shall be limited to that which is done under the direct supervision of a licensed podiatrist for the purpose of fulfilling a residency, internship, clerkship, or preceptorship program, shall not be performed for more than twelve (12) calendar months, and must have the prior approval of the Board.~~

**545:15-1-6. Qualifications for a preceptee [REVOKED]**

~~A preceptee must:~~

~~(1) be a graduate of a College of Podiatric Medicine as approved by the Council on Education of the American Podiatric Medical Association; and~~

~~(2) have successfully passed the National Board of Podiatry Examination; and~~

~~(3) have successfully passed the Oklahoma State Board of Podiatry Examination; and~~

~~(4) be a citizen of the State of Oklahoma or serve notice to establish residency in this State and actively practice podiatry in this State following completion of his or her preceptorship program; and~~

~~(5) show proof of having applied to and having been rejected from at least three approved hospital based residency programs, after having actively competed for these programs; and~~

~~(6) be responsible for obtaining a qualified podiatrist to serve as preceptor during this period of training.~~

~~(A) No more than four changes in preceptor may be made during any calendar or fiscal year.~~

~~(B) Any disagreement between the preceptee and the preceptor must be negotiated between the same.~~

~~(C) Any change of preceptor during the term of the preceptorship must require prior approval of the Board.~~

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### 545:15-1-7. Qualifications for preceptor [REVOKED]

A preceptor must:

- (1) be licensed in the State of Oklahoma to practice podiatry; and
- (2) have been in active practice in this State for a period of five or more years; and
- (3) have a well rounded practice in all areas of podiatric medicine and be able to offer training in these areas; and
- (4) have adequate patient flow to assure exposure to a preceptee to a variety of conditions; and
- (5) be capable of providing guidance in the preparation of a research project; and
- (6) have prior approval of the Board.

### 545:15-1-8. Course of study for preceptee [REVOKED]

A preceptee shall have in depth study and become proficient in the following areas:

- (a) **Office management techniques.** Understanding the operation of a modern office.
  - (1) Bookkeeping and business techniques.
  - (2) Office charting and record keeping.
  - (3) Insurance billing.
  - (4) Professional correspondence and reports.
- (b) **Interprofessional relationships.** Acquire a working relationship with the members of the medical community and the community in general.
- (c) **Hospital techniques.**
  - (1) Charting techniques.
  - (2) Operating room techniques.
  - (3) Medical staff activities.
  - (4) Inpatient hospital protocol.
- (d) **Development of podiatric skills.**
  - (1) History and physical examination.
  - (2) Office treatment techniques.
  - (3) Office and hospital based surgical techniques.
  - (4) Diagnostic and treatment techniques.
  - (5) Radiographic techniques.
  - (6) Development of pre-surgical criteria.
  - (7) Management of medical emergencies.
  - (8) Management of surgical complications.

### 545:15-1-9. Progress review of preceptee [REVOKED]

The secretary treasurer of the Board shall review the progress of a preceptee on a quarterly basis from a report submitted to the Board by the preceptee at the end of every eight week period. The secretary treasurer shall report to the Board and make any recommendations for successful completion as may be necessary to the preceptor.

[OAR Docket #03-735; filed 4-23-03]

## TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-662]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 1. General Provisions  
550:1-1-6 [AMENDED]
- Subchapter 3. Organization of Board  
550:1-3-3 [AMENDED]  
550:1-3-4 [AMENDED]  
550:1-3-5 [AMENDED]
- Subchapter 7. Collections and Disbursements  
550:1-7-4 [AMENDED]

### AUTHORITY:

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

### DATES:

#### Comment period:

January 15, 2003, through February 17, 2003

#### Public hearing:

February 19, 2003

#### Adoption:

February 19, 2003

#### Submitted to Governor:

February 20, 2003

#### Submitted to House:

February 20, 2003

#### Submitted to Senate:

February 20, 2003

#### Gubernatorial approval:

March 31, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 16, 2003.

#### Final adoption:

April 16, 2003

#### Effective:

June 1, 2003

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

The amendments to Subchapter 1 allow a participating municipality to submit a notice of change of address to the System on behalf of its active police officers.

The amendments to Subchapter 3 change the manner in which nomination petitions and election ballots are mailed to active officers, and they address how mailings returned by the U.S. Postal Service as undeliverable will be handled. The amendments change the time frame for some stages of the election process, and the amendments provide for the Board to have the authority to order a new election should the Board determine that the election process and/or results were affected by a material impropriety.

The amendments to Subchapter 7 pertain to the procedures to be followed, including documentation required, in making a disbursement to an estate.

Related statutes are 11 O.S. Section 50-103.1, 11 O.S. Section 50-111.1, 11 O.S. Section 50-111.3, 11 O.S. Section 50-114, 11 O.S. Section 50-115.2, 58 O.S. Section 393, and 58 O.S. Section 394.

#### CONTACT PERSON:

Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 27.

**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 JUNE 1, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

550:1-1-6. Status changes required in writing

Request for change of address and change of tax status must be made in writing. A participating municipality may request a change of address for an active member. A request for change of address submitted by a participating municipality must be submitted on the System's Notice of Change of Address form or the municipality's form which has been approved by the System and must be signed by the member or an authorized employee of the municipality.

SUBCHAPTER 3. ORGANIZATION OF BOARD

550:1-3-3. Nomination of Board members

(a) **Nomination procedure.** The following procedure shall govern the nomination of Board members:

- (1) Each member in the district under election will receive a letter from the Executive Director briefly describing the reason for the nomination/election, the general procedures to elect a Board member and the responsibilities of a Board member.
- (2) Included with a cover letter will be a nomination petition. The nomination petition for districts 1, 2, 3, and 4 will include a list of participating municipalities whose active members are eligible to be nominated. To be placed on the ballot for districts 1, 2, 3, and 4, nominees must receive signatures from 5% of the eligible active members in their respective district and the petition must include at least one signature from five different participating municipalities. To be placed on the ballot for districts 5 and 6, nominees must receive signatures from 5% of the eligible active members in their respective district. To be placed on the ballot for district 7, nominees must receive signatures from 25 retired members of the district with at least one signature being from retirees of five different municipalities. Members eligible to receive nomination petitions and election ballots; their mailing addresses; and, for districts 1, 2, 3, 4, 5, and 6, the number of signatures required to be placed on the ballot, will be determined at least ~~three months~~ one week prior to the date the ~~election ballot~~ nomination petition is to be mailed.
- (3) The cover letter and the nomination petition will be placed in individual envelopes addressed to each active member separately in care of ~~the police station~~ their mailing address on file with the System. The envelopes will ~~either be mailed First Class to the member or hand delivered to an authorized employee of the municipality for distribution to each active member.~~ Mailings to retired members will be made to the address used to mail year-end tax notices (1099R). Nomination petitions will be mailed at least ~~two months~~ six weeks prior to the date the election

ballot is to be mailed. The System shall make no attempt to forward/resend any mailing returned by the United States Postal Service as undeliverable unless it is found that the mailing was sent to an incorrect address due to an administrative error on the part of the System.

(4) Nomination petitions must be returned by certified mail with return receipt or delivered in person to the certified public accounting firm supervising the election or to the System. The cover letter mailed with the nomination petition will specify the date by which the nomination petition must be received by the certified public accounting firm or by the System. The nominee must also provide a 25 words or less biographical sketch to be included in the election ballot. The names of the nominees will be posted in the System's office for public view for not less than seven days.

(5) Should only one member be nominated for any district, that member will automatically become the Board member for that district.

(6) If no nominations are received by the deadline, the nomination petitions will be remailed and handled in accordance with the normal procedures. The time frame for such remailing shall be set by the Board.

(7) The Executive Director will verify that each nominee is eligible to be elected to the Board.

(b) **Certified public accounting firm procedures.** A certified public accounting firm shall:

(1) Meet with the Executive Director and determine the timing of the initial nomination mailing to each member in the districts electing a board member.

(2) Obtain from the Executive Director a copy of a list of municipalities included in each district holding an election.

(3) Obtain from the Executive Director a copy of a cover letter to be sent with the nomination mailing outlining the duties of a Board member, nomination and election process, critical dates, etc.

(4) Review ~~two sets of address labels, a mailing list~~ obtained from the Oklahoma Police Pension and Retirement System, for which contains the name and mailing address of each member in each district conducting an election.

(5) Obtain from the Executive Director a copy of the nomination petition and determine if any changes to the form are required.

(6) Review nomination package before mailing. Judgmentally select ~~40~~ members listed on the ~~address labels~~ mailing list and verify that they are to receive a nomination package. Judgmentally select ~~40~~ nomination packages and verify that members are listed on correct district ~~address labels~~ mailing list.

(7) Accumulate nomination responses and determine that each petition has the proper number of signatures from the appropriate municipalities.

(8) Require the Executive Director to verify that each nominee is eligible to be elected to the Board.

(c) **Oklahoma Police Pension and Retirement System procedures.** The Oklahoma Police Pension and Retirement System shall:

## Permanent Final Adoptions

- (1) Obtain ~~two sets of address labels for each member in a mailing list~~ for each district conducting an election. ~~These address labels~~ The mailing list should contain the member's name and the mailing address of the municipality in which they are employed or the address to which year-end tax notices (1099R) are mailed for retired members each member in the district eligible to receive a nomination petition and election ballot.
- (2) Obtain the nomination petition.
- (3) Photocopy the nomination petition. Make enough copies for each ~~address-label member on district mailing list.~~
- (4) Assemble the Executive Director's cover letter, nomination petition and list of eligible municipalities into a package, ~~utilizing one set of address labels,~~ and mail a package to each ~~individual member on district mailing list.~~
- (5) Prepare the ballot for each district holding an election. Include each nominee's biographical sketch.
- (6) Ballot to be posted in the office of the Oklahoma Police Pension and Retirement System for public view during regular office hours not less than seven business days before the ballot is to be mailed.

### 550:1-3-4. Election of Board members

- (a) **Election procedures.** The following procedures shall govern the election of Board members:
  - (1) Eligible nominees will be placed on the election ballot.
  - (2) A ballot will be sent to each member in the same manner as nomination requests were sent. The ballot will be mailed, ~~or hand delivered to an authorized employee of the municipality for distribution to each active member,~~ at least ~~two~~ three weeks prior to the specified returned date. This ballot will instruct voters to return their ballot directly to the certified public accounting firm and will specify the date by which the certified public accounting firm must receive the ballot in order for it to be counted. Self-addressed, postage-paid envelopes will be enclosed to return the ballots.
  - (3) Ballots will be pre-numbered and require the individual signature of the voter to be counted. Ballots will be printed on the certified public accounting firm letterhead or watermarked paper.
  - (4) The nominee receiving the highest number of votes, even if this constitutes less than 50% of the total votes cast, will be elected to serve on the Board.
  - (5) Votes cast for members other than nominees contained on the ballot will not be counted.
  - (6) Votes returned to the Oklahoma Police Pension and Retirement System or some location other than the certified public accounting firm's office will not be counted.
  - (7) Votes received after the deadline will not be counted.
  - (8) Ballots with more than one vote will not be counted.
  - (9) Ballots which are not signed will not be counted.
- (b) **Certified public accounting firm procedure.** A certified public accounting firm shall:

- (1) Review ballots before mailing. Judgmentally select ~~40~~ members listed on the ~~address-labels district mailing list~~ and verify that they are to receive a ballot. Judgmentally select ~~40~~ ballots and verify that members are listed on correct district ~~address-labels mailing list.~~
  - (2) Accumulate responses and total results.
  - (3) Exclude any ballots not received by the certified public accounting firm by the cut-off date, or other spoiled ballots.
  - (4) Provide the total number of votes cast for each nominee and total available votes to the Oklahoma Police Pension and Retirement Board.
- (c) **Oklahoma Police Pension and Retirement System procedures.** The Oklahoma Police Pension and Retirement System shall:
- (1) Photocopy and/or print the ballot on the certified public accounting firm letterhead or watermarked paper.
  - (2) Pre-Number each ballot sequentially.
  - (3) ~~Utilizing the second set of address labels, place the label~~ Apply the name and mailing address of each member on district mailing list on ~~each~~ a ballot and place the ballot and a self-addressed return envelope in window envelopes.
  - (4) After certified public accounting firm has audited the ballots, mail a package to each ~~individual member on district mailing list.~~
  - (5) Send notification of election results to nominees via certified mail.

- (d) **Tie votes.** Should two nominees tie for the most votes received, the election will be conducted again between the two nominees.

- (e) ~~Challenge-recount-process~~ **Election challenge.** A nominee has 10 days from the date they receive notice of the election results to provide the System with written notice of their desire to challenge the results. ~~Should the election results be challenged by a nominee, the recount procedures will be established by the Oklahoma Police Pension and Retirement Board and could include:~~

- (1) ~~Verification of a sample or all of the signatures on the ballots.~~
- (2) ~~Re-perform the election with notarized ballots.~~
  - (1) Should the election results be challenged by a nominee, procedures for determining the winning nominee will be established by the Oklahoma Police Pension and Retirement Board and could include but is not limited to:
    - (A) Verification of a sample or all of the signatures on the ballots.
    - (B) Re-perform the election with notarized ballots.
  - (2) The Board may order a new election if the Board, in its discretion, finds that the previous election an/or result was affected by some material impropriety. The new election will be conducted in the same manner as provided by rules with the exception that the Board may establish a revised time frame for the new election.

### 550:1-3-5. Filling Board vacancies

- (a) A vacancy occurring within six months of the normal three year election cycle shall not be filled until the regular election.

(b) A vacancy occurring other than above shall be filled by a special election conducted in the same manner as the normal nomination/election process. However, the Board in its discretion may establish a time frame for the special election different from that of the normal nomination/election process.

**SUBCHAPTER 7. COLLECTIONS AND DISBURSEMENTS**

**550:1-7-4. Vouchers payable to an estate**

(a) **Conditions for obtaining voucher payable to an estate.** The Oklahoma Police Pension and Retirement System will issue a voucher to an estate upon the following conditions being met:

(1) ~~For benefits in excess of \$1,000.00 from the Oklahoma Police Pension and Retirement System, estates whose value exceeds Ten Thousand Dollars (\$10,000.00), the personal representative of the estate of the deceased must have filed a probate action in a court of competent jurisdiction, have been issued either letters testamentary or letters of administration, and must furnish the Oklahoma Police Pension and Retirement System with a tax identification number.~~

(2) ~~For benefits up to \$1,000.00, should a probate action not be filed, in order for benefits to be paid from the Oklahoma Police Pension and Retirement System the personal representative of the estate of the deceased member must provide a Board approved affidavit of heirship indicating that the individual is the personal representative of the estate of the deceased member and must furnish the Oklahoma Police Pension and Retirement System with a tax identification number.~~

(2) For estates whose value does not exceed Ten Thousand Dollars (\$10,000.00), the provisions of 58 O.S. Sections 393 and 394 shall apply. In addition, a tax identification number must be furnished to the Oklahoma Police Pension and Retirement System.

(b) **Payment.** The benefits to an estate shall be paid by voucher payable to the ~~named personal representative of the estate of the deceased~~ for estates whose value exceeds Ten Thousand Dollars (\$10,000.00) or to the affiant as hereinbefore provided for estates whose value does not exceed Ten Thousand Dollars (\$10,000.00). The payment shall be mailed by the Oklahoma Police Pension and Retirement System following Board approval on the last business day of the month.

[OAR Docket #03-662; filed 4-17-03]

**TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM  
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #03-661]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 7. Collections and Disbursements

550:1-7-2.1 [NEW]

550:1-7-5 [NEW]

**AUTHORITY:**

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

**DATES:**

**Comment period:**

January 15, 2003, through February 17, 2003

**Public hearing:**

February 19, 2003

**Adoption:**

February 19, 2003

**Submitted to Governor:**

February 20, 2003

**Submitted to House:**

February 20, 2003

**Submitted to Senate:**

February 20, 2003

**Gubernatorial approval:**

March 31, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 16, 2003.

**Final adoption:**

April 16, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The amendments to Subchapter 7 are for the purpose of implementing IRS requirements in accord with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). The rules pertain to the conditions under which in-service distributions to members are allowed. The rules also pertain to direct rollovers from an individual member's account to certain eligible retirement plans.

Statutes and rules that these amendments relate to are 11 O. S. Section 50-111.3, 11 O.S. Section 50-112, 11 O.S. Section 50-114.2, 11 O.S. Section 50-124(B), and OAC 550:15-1-2.

**CONTACT PERSON:**

Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 27.

**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 JUNE 1, 2003:**

**SUBCHAPTER 7. COLLECTIONS AND DISBURSEMENTS**

# Permanent Final Adoptions

## **550:1-7-2.1. Reemployment by participating municipality**

Retirement pursuant to 11 O.S. Section 50-112 has at all times included reemployment of a member by a participating municipality in a position not covered by the Oklahoma Police Pension and Retirement System. Thus, in-service distributions from the Oklahoma Police Pension and Retirement System to such a member are permitted. In-service distributions to a reemployed police chief are also permitted.

## **550:1-7-5. Direct rollovers**

(a) A Distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Definitions:

(1) "Eligible Rollover Distribution" is generally a lump sum distribution except that an Eligible Rollover Distribution does not include monthly retirement benefits and minimum distribution payments.

(2) "Eligible Retirement Plan" means an IRA (excluding a Roth IRA), a Section 403(a) annuity plan, and a 401(a) qualified plan that accepts the Distributee's Eligible Rollover Distribution. An Eligible Retirement Plan also means a 403(b) annuity and an eligible 457(b) plan which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the Oklahoma Police Pension and Retirement System. The definition of Eligible Retirement Plan also applies to a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee pursuant to a qualified domestic order as defined in 11 O.S. Section 50-124(B).

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic order, as defined in 11 O.S. Section 50-124(B), are Distributees with regard to the interest of the spouse or the former spouse.

(4) "Direct Rollover" means a payment by the Oklahoma Police Pension and Retirement System to the Eligible Retirement Plan specified by the Distributee.

(c) At least thirty (30) days and not more than ninety (90) days before the date of distribution, the Distributee must be provided with the IRS Notice regarding rollover options and tax effects. The distribution may be paid less than thirty (30) days after the notice is given, provided that:

(1) The Board clearly informs the Distributee that the Distributee has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution; and

(2) The Distributee, after receiving the notice, affirmatively elects a distribution.

(d) An Eligible Retirement Plan which is selected by the Distributee shall be the result of the Distributee's own research and investigation. The Oklahoma Police Deferred Option Plan

and/or the Oklahoma Police Pension and Retirement System shall not be subject to any fees or charges from the Eligible Retirement Plan.

*[OAR Docket #03-661; filed 4-17-03]*

## **TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 10. RETIREMENT AND PENSION BENEFIT PROGRAM**

*[OAR Docket #03-663]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

550:10-1-2 [AMENDED]

550:10-1-4 [AMENDED]

### **AUTHORITY:**

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

### **DATES:**

#### **Comment period:**

January 15, 2003, through February 17, 2003

#### **Public hearing:**

February 19, 2003

#### **Adoption:**

February 19, 2003

#### **Submitted to Governor:**

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February 20, 2003

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February 20, 2003

#### **Gubernatorial approval:**

March 31, 2003

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 16, 2003.

#### **Final adoption:**

April 16, 2003

#### **Effective:**

June 1, 2003

### **SUPERSEDED EMERGENCY ACTIONS:**

n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **ANALYSIS:**

The amendments establish physical-medical examination requirements that will be used for the purpose of identifying preexisting medical conditions rather than for determining if an individual meets post-offer, pre-employment medical standards. Because there would no longer be specific physical/medical standards that must be met for membership in the System, it was determined that the rules pertaining to essential duties of a police officer, minimum qualifications of a police officer, and working conditions/physical requirements of a police officer, were no longer needed.

Related statutes are 11 O.S. Section 50-106(3) and 11 O.S. Section 50-112.

### **CONTACT PERSON:**

Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 27.

**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 JUNE 1, 2003:**

**550:10-1-2. Medical standards for police officers  
Physical-medical examination  
requirements**

(a) The job duties of a police officer have been utilized by the Board in establishing the following medical standards for membership in the system:

(1) ~~Category A medical condition: a medical condition that would preclude a person from performing as a police officer in a training or emergency operational environment by presenting a significant risk to the safety and health of the person or others.~~

(2) ~~Category B medical condition: a medical condition that based on its severity or degree may preclude a person from performing as a police officer in a training or emergency operational environment by presenting a significant risk to the safety and health of the person or others.~~

(b) ~~Category A and Category B medical conditions are as follows:~~

(a) The Oklahoma Police Pension and Retirement System shall supply the physical-medical examination form which shall be completed by the applicant and the examining medical professional and submitted to the Oklahoma Police Pension and Retirement System prior to employment with a participating municipality. The physical-medical examination form shall include a release for medical/psychological information.

(b) The completed physical-medical examination form shall be provided to the Oklahoma Police Pension and Retirement System for submission to the Board's reviewing physician or medical professional to identify any preexisting medical/psychological conditions.

(c) The physical-medical examination shall cover, but is not limited to, the following medical conditions:

(1) **Head and Neck.**

(A) Head:

(i) ~~Category A medical conditions shall include:~~

(I) ~~None.~~

(ii) ~~Category B medical conditions shall include:~~

(I) ~~Deformities of the skull such as depressions or exostoses.~~

(II) ~~Deformities of the skull associated with evidence of disease of the brain, spinal cord, or peripheral nerves.~~

(III) ~~Loss or congenital absence of the bony substance of the skull.~~

(IV) ~~Any other head condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~

(i) Deformities of the skull such as depressions or exostoses.

(ii) Deformities of the skull associated with evidence of disease of the brain, spinal cord, or peripheral nerves.

(iii) Loss or congenital absence of the bony substance of the skull.

(B) Neck:

(i) ~~Category A medical conditions shall include:~~

(I) ~~None.~~

(ii) ~~Category B medical conditions shall include:~~

(I) ~~Thoracic outlet syndrome.~~

(II) ~~Congenital cysts, chronic draining fistulas, or similar lesion.~~

(III) ~~Contracture of neck muscles.~~

(IV) ~~Any other neck condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~

(i) Thoracic outlet syndrome.

(ii) Congenital cysts, chronic draining fistulas, or similar lesion.

(iii) Contracture of neck muscles.

(C) Eyes and vision:

(i) ~~Category A medical conditions shall include:~~

(I) ~~Far visual acuity. Far visual acuity shall be at least 20/30 in each eye with or without corrective lenses.~~

(II) ~~Peripheral vision. Visual field performance without correction shall be 140 degrees in the horizontal meridian in each eye.~~

(ii) ~~Category B medical conditions shall include:~~

(I) ~~Diseases of the eye such as retinal detachment, progressive retinopathy, or optic neuritis.~~

(II) ~~Ophthalmological procedures such as radial keratotomy or repair of retinal detachment.~~

(III) ~~Any other eye condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~

(i) Far visual acuity in each eye.

(ii) Peripheral vision.

(iii) Diseases of the eye such as retinal detachment, progressive retinopathy, or optic neuritis.

(iv) Ophthalmological procedures such as radial keratotomy or repair of retinal detachment.

(D) Ears and hearing:

(i) ~~Category A medical conditions shall include:~~

(I) ~~None.~~

(ii) ~~Category B medical conditions shall include:~~

(I) ~~Auditory canal — atresia, severe stenosis, or tumor.~~

(II) ~~Severe external otitis.~~

(III) ~~Auricle — severe agenesis or traumatic deformity.~~

(IV) ~~Mastoid — severe mastoiditis or surgical deformity.~~

(V) ~~Meniere's syndrome or labyrinthitis.~~

(VI) ~~Otitis media.~~

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- (VII) ~~Any other ear condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
- (VIII) ~~Hearing deficit in the pure tone thresholds in the aided or unaided worst ear greater than 25 dB in three of the four frequencies 500 Hz, 1000 Hz, 2000 Hz, 3000 Hz, OR greater than 30 dB in any one of the three frequencies 500 Hz, 1000 Hz, 2000 Hz, AND an average greater than 30 dB for the four frequencies 500 Hz, 1000 Hz, 2000 Hz, 3000 Hz.~~
- (i) Auditory canal -- atresia, severe stenosis, or tumor.
- (ii) Severe external otitis.
- (iii) Auricle -- severe agenesis or traumatic deformity.
- (iv) Mastoid -- severe mastoiditis or surgical deformity.
- (v) Meniere's syndrome or labyrinthitis.
- (vi) Otitis media.
- (vii) Hearing deficit in the pure tone thresholds, with or without aids in both ears, in the following frequencies: 500 Hz, 1000 Hz, 2000 Hz, 3000 Hz, 4000 Hz, and 6000 Hz.
- (E) Dental:
- (i) ~~Category A medical conditions shall include:~~
- (I) ~~None.~~
- (ii) ~~Category B medical conditions shall include:~~
- (I) ~~Diseases of the jaws or associated tissues.~~
- (II) ~~Orthodontic appliances.~~
- (III) ~~Oral tissues, extensive loss.~~
- (IV) ~~Any other dental condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
- (i) Diseases of the jaws or associated tissues.
- (ii) Orthodontic appliances.
- (iii) Oral tissues, extensive loss.
- (F) Nose, oropharynx, trachea, esophagus, and larynx:
- (i) ~~Category A medical conditions shall include:~~
- (I) ~~Tracheostomy.~~
- (II) ~~Aphonia.~~
- (ii) ~~Category B medical conditions shall include:~~
- (I) ~~Congenital or acquired deformity.~~
- (II) ~~Allergic respiratory disorder.~~
- (III) ~~Sinusitis, recurrent.~~
- (IV) ~~Dysphonia.~~
- (V) ~~Any other nose, oropharynx, trachea, esophagus, or larynx condition that results in a person not being able to perform as a police officer or to communicate effectively.~~
- (i) Tracheostomy.
- (ii) Aphonia.
- (iii) Congenital or acquired deformity.
- (iv) Allergic respiratory disorder.
- (v) Sinusitis, recurrent.
- (vi) Dysphonia.
- (2) **Heart and vascular system.**
- (A) Heart:
- (i) ~~Category A medical conditions shall include:~~
- (I) ~~Current angina pectoris.~~
- (II) ~~Myocardial insufficiency.~~
- (III) ~~Acute pericarditis, endocarditis, or myocarditis. Chronic pericarditis, endocarditis with resultant significant valvular lesions, or myocarditis leading to myocardial insufficiency or excludable arrhythmias.~~
- (IV) ~~History of myocardial infarction, coronary artery bypass, or coronary angioplasty.~~
- (V) ~~Cardiac pacemaker.~~
- (VI) ~~Recurrent syncope.~~
- (ii) ~~Category B medical conditions shall include:~~
- (I) ~~Significant valvular lesions of the heart including prosthetic valves.~~
- (II) ~~Coronary artery disease.~~
- (III) ~~Atrial tachycardia, flutter, or fibrillation.~~
- (IV) ~~Third degree atrio-ventricular block.~~
- (V) ~~Ventricular tachycardia.~~
- (VI) ~~Hypertrophy of the heart.~~
- (VII) ~~Recurrent paroxysmal tachycardia.~~
- (VIII) ~~History of a congenital abnormality.~~
- (IX) ~~Any other cardiac condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
- (i) Current angina pectoris.
- (ii) Myocardial insufficiency.
- (iii) Acute pericarditis, endocarditis, or myocarditis. Chronic pericarditis, endocarditis with resultant significant valvular lesions, or myocarditis leading to myocardial insufficiency or excludable arrhythmias.
- (iv) History of myocardial infarction, coronary artery bypass, or coronary angioplasty.
- (v) Cardiac pacemaker.
- (vi) Recurrent syncope.
- (vii) Significant valvular lesions of the heart including prosthetic valves.
- (viii) Coronary artery disease.
- (ix) Atrial tachycardia, flutter, or fibrillation.
- (x) Third degree atrio-ventricular block.
- (xi) Ventricular tachycardia.
- (xii) Hypertrophy of the heart.
- (xiii) Recurrent paroxysmal tachycardia.
- (xiv) History of a congenital abnormality.
- (B) Vascular system:
- (i) ~~Category A medical conditions shall include:~~

- (I) Congenital or acquired lesions of the aorta and major vessels.
  - (II) Marked circulatory instability as indicated by orthostatic hypotension, persistent tachycardia, and severe peripheral vasomotor disturbances.
  - (III) Aneurysm of the heart or major vessels, congenital or acquired.
  - (ii) ~~Category B medical conditions shall include:~~
    - (I) Hypertension.
    - (II) Peripheral vascular disease such as Raynaud's phenomenon.
    - (III) Recurrent thrombophlebitis.
    - (IV) Chronic lymphedema due to lymphopathy or severe venous valvular incompetency.
    - (V) Any other vascular condition that results in a person not being able to perform as a police officer [see 550:10-1-4].
  - (i) Congenital or acquired lesions of the aorta and major vessels.
  - (ii) Marked circulatory instability as indicated by orthostatic hypotension, persistent tachycardia, and severe peripheral vasomotor disturbances.
  - (iii) Aneurysm of the heart or major vessels, congenital or acquired.
  - (iv) Hypertension.
  - (v) Peripheral vascular disease such as Raynaud's phenomenon.
  - (vi) Recurrent thrombophlebitis.
  - (vii) Chronic lymphedema due to lymphopathy or severe venous valvular incompetency.
- (3) **Lungs, abdomen, spine and joint.**
- (A) Lungs and chest wall:
    - (i) ~~Category A medical conditions shall include:~~
      - (I) Suppurative disease of lung or pleural space.
    - (ii) ~~Category B medical conditions shall include:~~
      - (I) Lobectomy.
      - (II) Bronchial asthma.
      - (III) History of bronchiectasis, bronchitis, fibrous pleuritis, fibrosis, cystic disease, tuberculosis, or mycotic disease of the lung.
      - (IV) Pneumothorax.
      - (V) Any other pulmonary or chest wall condition that results in a person not being able to perform as a police officer [see 550:10-1-4].
    - (i) Suppurative disease of lung or pleural space.
    - (ii) Lobectomy.
    - (iii) Bronchial asthma.
    - (iv) History of bronchiectasis, bronchitis, fibrous pleuritis, fibrosis, cystic disease, tuberculosis, or mycotic disease of the lung.
    - (v) Pneumothorax.
  - (B) Abdominal organs and gastrointestinal system:
    - (i) ~~Category A medical conditions shall include:~~
      - (I) Chronic active hepatitis.
    - (ii) ~~Category B medical conditions shall include:~~
      - (I) Cholecystectomy or cholecystitis.
      - (II) Gastritis.
      - (III) Hemorrhoids.
      - (IV) Acute hepatitis.
      - (V) Hernia.
      - (VI) Inflammatory bowel disease.
      - (VII) Intestinal obstruction.
      - (VIII) Pancreatitis.
      - (IX) Resection, bowel.
      - (X) Ulcer, gastrointestinal.
      - (XI) Cirrhosis, hepatic or biliary.
      - (XII) Any other gastrointestinal condition that results in a person not being able to perform as a police officer [see 550:10-1-4].
    - (i) Cholecystectomy or cholecystitis.
    - (ii) Gastritis.
    - (iii) Hemorrhoids.
    - (iv) Acute hepatitis.
    - (v) Hepatitis B.
    - (vi) Hepatitis C.
    - (vii) Hernia.
    - (viii) Inflammatory bowel disease.
    - (ix) Intestinal obstruction.
    - (x) Pancreatitis.
    - (xi) Resection, bowel.
    - (xii) Ulcer, gastrointestinal.
    - (xiii) Cirrhosis, hepatic or biliary.
  - (C) Spine, scapula, ribs, and sacroiliac joints:
    - (i) ~~Category A medical conditions shall include:~~
      - (I) None.
    - (ii) ~~Category B medical conditions shall include:~~
      - (I) Arthritis.
      - (II) Structural abnormality, fracture, or dislocation.
      - (III) Nucleus pulposus, herniation of or history of laminectomy.
      - (IV) Any other spinal condition that results in a person not being able to perform as a police officer [see 550:10-1-4].
    - (i) Arthritis.
    - (ii) Structural abnormality, fracture, or dislocation.
    - (iii) Nucleus pulposus, herniation of or history of laminectomy.
  - (D) Extremities:
    - (i) ~~Category A medical conditions shall include:~~
      - (I) None.

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- (ii) ~~Category B medical conditions shall include:~~
    - ~~(I) Limitation of motion of a joint.~~
    - ~~(II) Amputation or deformity of a joint or limb.~~
    - ~~(III) Dislocation of a joint.~~
    - ~~(IV) Joint reconstruction, ligamentous instability, or joint replacement.~~
    - ~~(V) Chronic osteoarthritis or traumatic arthritis.~~
    - ~~(VI) Inflammatory arthritis.~~
    - ~~(VII) Any other extremity condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
  - (i) Limitation of motion of a joint.
  - (ii) Amputation or deformity of a joint or limb.
  - (iii) Dislocation of a joint.
  - (iv) Joint reconstruction, ligamentous instability, or joint replacement.
  - (v) Chronic osteoarthritis or traumatic arthritis.
  - (vi) Inflammatory arthritis.
- (4) **Genitourinary system.**
- (A) Reproductive:
    - (i) ~~Category A medical conditions shall include:~~
      - ~~(I) Pregnancy, for its duration.~~
    - (ii) ~~Category B medical conditions shall include:~~
      - ~~(I) Dysmenorrhea.~~
      - ~~(II) Endometriosis, ovarian cysts, or other gynecologic conditions.~~
      - ~~(III) Testicular or epididymal mass.~~
      - ~~(IV) Any other genital condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
  - (i) Pregnancy.
  - (ii) Dysmenorrhea.
  - (iii) Endometriosis, ovarian cysts, or other gynecologic conditions.
  - (iv) Testicular or epididymal mass.
- (B) Urinary system:
  - (i) ~~Category A medical conditions shall include:~~
    - ~~(I) None.~~
  - (ii) ~~Category B medical conditions shall include:~~
    - ~~(I) Diseases of the kidney.~~
    - ~~(II) Diseases of the ureters, bladder, or prostate.~~
    - ~~(III) Any other condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
- (i) Diseases of the kidney.
- (ii) Diseases of the ureters, bladder, or prostate.
- (5) **Other conditions.**
- (A) Neurological disorders:
    - (i) ~~Category A medical conditions shall include:~~
      - ~~(I) Ataxias of heredo-degenerative type.~~
      - ~~(II) Cerebral arteriosclerosis as evidenced by documented episodes of neurological impairment.~~
      - ~~(III) Multiple sclerosis with activity or evidence of progression within previous three years.~~
      - ~~(IV) Progressive muscular dystrophy or atrophy.~~
      - ~~(V) Candidates shall be excluded if they have any form of seizure disorder [simple partial, complex, generalized, psychomotor or absence (petit mal)] without complete control in the past five (5) years. The absence of seizure in the past five (5) year period and a normal neurological examination would require verification by a certified neurological physician. The Board's physician shall review type and pattern of seizure disorder prior to approval. Candidates with a history of seizure disorder following discontinuation of antiepileptic medication for two (2) years with no recurrence shall be acceptable upon review of the Board's physician.~~
      - ~~(VI) Narcolepsy.~~
    - (ii) ~~Category B medical conditions shall include:~~
      - ~~(I) Congenital malformations.~~
      - ~~(II) Migraine.~~
      - ~~(III) Clinical disorders with paresis, paralysis, dyscoordination, deformity, abnormal motor activity, abnormality of sensation, or complaint of pain.~~
      - ~~(IV) Subarachnoid or intracerebral hemorrhage.~~
      - ~~(V) Abnormalities from recent head injury such as severe cerebral contusion or concussion.~~
      - ~~(VI) Any other neurological condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
    - (i) Ataxias of heredo-degenerative type.
    - (ii) Cerebral arteriosclerosis as evidenced by documented episodes of neurological impairment.
    - (iii) Multiple sclerosis with activity or evidence of progression within previous three years.
    - (iv) Progressive muscular dystrophy or atrophy.
    - (v) Any form of seizure disorder [simple partial, complex, generalized, psychomotor or absence (petit mal)].
    - (vi) Narcolepsy.
    - (vii) Congenital malformations.
    - (viii) Migraine.

- (ix) Clinical disorders with paresis, paralysis, dyscoordination, deformity, abnormal motor activity, abnormality of sensation, or complaint of pain.
  - (x) Subarachnoid or intracerebral hemorrhage.
  - (xi) Abnormalities from recent head injury such as severe cerebral contusion or concussion.
- (B) Skin:
- ~~(i) Category A medical conditions shall include:~~
    - ~~(I) None.~~
  - ~~(ii) Category B medical conditions shall include:~~
    - ~~(I) Acne or inflammatory skin disease.~~
    - ~~(II) Eczema.~~
    - ~~(III) Any other dermatologic condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
- (i) Acne or inflammatory skin disease.
  - (ii) Eczema.
- (C) Blood and blood-forming organs:
- ~~(i) Category A medical conditions shall include:~~
    - ~~(I) Hemorrhagic states requiring replacement therapy.~~
    - ~~(II) Sickle cell disease (homozygous).~~
  - ~~(ii) Category B medical conditions shall include:~~
    - ~~(I) Anemia.~~
    - ~~(II) Leukopenia.~~
    - ~~(III) Polycythemia vera.~~
    - ~~(IV) Splenomegaly.~~
    - ~~(V) History of thromboembolic disease.~~
    - ~~(VI) Any other hematological condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
- (i) Hemorrhagic states requiring replacement therapy.
  - (ii) Sickle cell disease (homozygous).
  - (iii) Anemia.
  - (iv) Leukopenia.
  - (v) Polycythemia vera.
  - (vi) Splenomegaly.
  - (vii) History of thromboembolic disease.
- (D) Endocrine and metabolic disorders:
- ~~(i) Category A medical conditions shall include:~~
    - ~~(I) None.~~
  - ~~(ii) Category B medical conditions shall include:~~
    - ~~(I) Diseases of the adrenal gland, pituitary gland, parathyroid gland, or thyroid gland of clinical significance.~~
    - ~~(II) Nutritional deficiency disease or metabolic disorder.~~
    - ~~(III) Diabetes mellitus.~~
    - ~~(IV) Any other endocrine or metabolic condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
- (i) Diseases of the adrenal gland, pituitary gland, parathyroid gland, or thyroid gland of clinical significance.
  - (ii) Nutritional deficiency disease or metabolic disorder.
  - (iii) Diabetes mellitus.
- (E) Systemic diseases and miscellaneous conditions:
- ~~(i) Category A medical conditions shall include:~~
    - ~~(I) None.~~
  - ~~(ii) Category B medical conditions shall include:~~
    - ~~(I) Connective tissue disease, such as dermatomyositis, lupus erythematosus, scleroderma and rheumatoid arthritis.~~
    - ~~(II) Residuals from past thermal injury.~~
    - ~~(III) Documented evidence of a predisposition to heat stress with recurrent episodes or resulting residual injury.~~
    - ~~(IV) Any other systemic condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
- (i) Connective tissue disease, such as dermatomyositis, lupus erythematosus, scleroderma and rheumatoid arthritis.
  - (ii) Residuals from past thermal injury.
  - (iii) Documented evidence of a predisposition to heat stress with recurrent episodes or resulting residual injury.
- (F) Tumors and malignant diseases:
- ~~(i) Category A medical conditions shall include:~~
    - ~~(I) Malignant disease which is newly diagnosed; untreated, or currently being treated until treatment has been completed.~~
  - ~~(ii) Category B medical conditions shall include:~~
    - ~~(I) Treated malignant disease shall be evaluated based on that person's current physical condition and on the likelihood of that person's disease to recur or progress.~~
    - ~~(II) Any other tumor or similar condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~
- (i) History of psychiatric condition.
- (G) Psychiatric conditions:
- ~~(i) Category A medical conditions shall include:~~
    - ~~(I) None.~~
  - ~~(ii) Category B medical conditions shall include:~~
    - ~~(I) A history of psychiatric condition or substance abuse problem shall be evaluated based on that person's current condition.~~
    - ~~(II) Any other psychiatric condition that results in a person not being able to perform as a police officer [see 550:10-1-4].~~

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- (ii) Substance abuse problems.
- (H) Chemicals, drugs, and medications:
  - (i) Category A medical conditions shall include:
    - (I) None.
  - (ii) Category B medical conditions shall include:
    - (I) Anticoagulant agents.
    - (II) Cardiovascular agents.
    - (III) Narcotics.
    - (IV) Sedative hypnotics.
    - (V) Stimulants.
    - (VI) Psychoactive agents.
    - (VII) Steroids.
    - (VIII) Any other chemical, drug, or medication that results in a person not being able to perform as a police officer [see 550:10-1-4].
- (i) Anticoagulant agents.
- (ii) Cardiovascular agents.
- (iii) Narcotics.
- (iv) Sedative-hypnotics.
- (v) Stimulants.
- (vi) Psychoactive agents.
- (vii) Steroids.

- (I) Immunologic deficiency diseases:
  - (i) Acquired immunodeficiency syndrome (Aids).
  - (ii) HIV positive without evidence of HIV infection.

(ed) Medical examination results are valid for no more than six (6) months after date of examination.

(de) A medical examination is required for all persons who have ceased employment from a participating municipality as a police officer for more than 90 days.

## 550:10-1-4. Job description of a police officer

(a) Police officer is a non-exempt entry level law enforcement officer in the Police Department.

(b) The following is a summary of essential duties of a police officer:

- (1) ~~Operates a motor vehicle for extended periods of time in all environmental conditions and on occasion operates the vehicle at high speeds and in congested traffic situations.~~
- (2) ~~Patrols assigned area of municipality and enforces state and federal laws and municipal ordinances; patrols and examines buildings and residences to detect suspicious conditions and handles situations accordingly.~~
- (3) ~~Directs traffic in congested and emergency areas; reports safety hazards; responds to scene of accident, administers first aid, and investigates cause and files accident reports; issues citations to violators of traffic laws.~~
- (4) ~~Visits the scene of crimes and accidents; searches for and preserves evidence; investigates and interviews victims, witnesses and potential suspects; apprehends those suspected of crimes or misdemeanors; participates in lineups; makes oral and written reports; provides testimony in court.~~

- (5) ~~Speaks before citizens and citizens' groups and participates in various training sessions.~~
- (e) ~~The following are the minimum qualifications of a police officer:~~

- (1) ~~Must be 21 years old. Must be able to qualify on the shooting range. Must be able to pass the Oklahoma Police Pension and Retirement System's medical standards and be State certified.~~
- (2) ~~Ability to operate two way radio, walkie talkie in field situations, and to operate effectively radar equipment, equipment for measuring blood and/or breath alcohol levels, etc.; to perform routine preventative maintenance on vehicle.~~
- (3) ~~Ability to read, understand and interpret ordinances, laws, and other operating procedures and communicate orally and in writing; ability to investigate crimes and do reports.~~
- (4) ~~Ability to deal effectively with the public using tact and diplomacy and remain calm in emergency situations; provide constitutional requirements, and perform first aid and/or CPR.~~
- (5) ~~Ability to make split second decisions that could affect the well being of the public, department, fellow employees, as well as the officer's safety. Ability to interface with other law enforcement personnel and safety personnel.~~
- (6) ~~Ability and willingness to maintain strict confidentiality.~~
- (7) ~~Must be able to respond to varying situations with tact and diplomacy and know how to deal with stressful, hostile or irrational persons, whether due to physical or mental disability, drugs, socio-economic differences, or other factors.~~

(d) ~~The following are the working conditions/physical requirements of a police officer:~~

- (1) ~~Some exposure to unpleasant weather and requires continuous attention to safe working and operating procedures to ensure the safety of one's self and fellow citizens.~~
- (2) ~~Possibility of body attacks while making an arrest; severe bodily harm while dealing with felons.~~
- (3) ~~Must possess the physical strength and stamina to chase and subdue fleeing persons; to arrest them if necessary; and to bring them into custody.~~
- (4) ~~Great probability of working rotating shifts, extended hours, emergency call out, and to testify at court on days off.~~
- (5) ~~Must have the physical strength and stamina to rescue victims.~~
- (6) ~~Must have the visual acuity to identify suspects; detect danger, read licenses and tags, etc.~~
- (7) ~~Must possess the aural acuity to understand conversation in quiet and noisy environments, understand radio transmissions, distinguish between car backfires and gun shots, determine location of persons in distress, etc.~~
- (8) ~~Must be able to communicate effectively to transmit information via the radio, talk to victims, suspects, etc.~~

[OAR Docket #03-663; filed 4-17-03]

**TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM  
CHAPTER 15. OKLAHOMA POLICE DEFERRED OPTION PLAN**

[OAR Docket #03-664]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

550:15-1-2 [AMENDED]

**AUTHORITY:**

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

**DATES:**

**Comment period:**

January 15, 2003, through February 17, 2003

**Public hearing:**

February 19, 2003

**Adoption:**

February 19, 2003

**Submitted to Governor:**

February 20, 2003

**Submitted to House:**

February 20, 2003

**Submitted to Senate:**

February 20, 2003

**Gubernatorial approval:**

March 31, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 16, 2003.

**Final adoption:**

April 16, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The amendments clarify that contributions and interest will cease to be credited to a member's option account at the conclusion of a member's participation in the Oklahoma Police Deferred Option Plan or when the member terminates employment prior to the end of five years. The amendments also clarify that at the conclusion of a member's participation in the Oklahoma Police Deferred Option Plan the member must terminate employment and start receiving the member's accrued monthly retirement benefit from the System. Such member can be reemployed by a participating municipality, but only in a position not covered under the System or as a police chief. The amendments also pertain to options members and/or their beneficiaries have for payment of their deferred option account balance.

Related statutes are 11 O.S. Section 50-111.3 and 11 O.S. Section 50-114.2.

**CONTACT PERSON:**

Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 27.

**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 JUNE 1, 2003:**

**550:15-1-2. Deferred option plan**

**(a) Application.**

(1) The applicant must have twenty (20) years or more of credited service with the Oklahoma Police Pension and Retirement System to be eligible.

(2) The applicant must submit his/her completed application for participation in the Oklahoma Police Deferred Option Plan. Forms will be provided by the Oklahoma Police Pension and Retirement System.

(3) The Oklahoma Police Pension and Retirement System must receive the application a minimum of sixty (60) days prior to effective date. The Board, for good cause, may waive the sixty (60) day minimum requirement.

(4) The effective date of membership will be the first day of the month.

(5) ~~The participation in the Oklahoma Police Deferred Option Plan is irrevocable once~~ Once the Board has approved ~~the a~~ a member's application and the member's option account has been credited with the first contribution or benefit, the member's participation in the Oklahoma Police Deferred Option Plan is irrevocable as long as the member remains employed.

**(b) Contributions.**

(1) The final member contribution made to the Oklahoma Police Pension and Retirement System shall be for the last pay period prior to the first of the month in which the member becomes a participant in the Oklahoma Police Deferred Option Plan.

(2) The employer's contribution will continue to the Oklahoma Police Pension and Retirement System.

(3) The member's option account shall be credited fifty percent (50%) of the employer's contribution received for the member and the Oklahoma Police Pension and Retirement System shall be credited fifty percent (50%). The credit to the member's option account shall be made the next work day after receipt of the employer's contribution.

(4) Only the member's portion of the employer's contribution will be credited to the member's option account. No other contributions will be accepted.

(5) When a member has participated in the Oklahoma Police Deferred Option Plan for five (5) years or if the member terminates employment prior to the end of five (5) years, contributions will no longer be credited to the member's option account.

**(c) Benefits.**

(1) The monthly retirement benefit that would have been payable had the member elected to cease employment and receive a service retirement shall be credited into the member's option account.

(2) The member's service retirement benefit ~~freezes~~ is frozen and at no time will he/she be allowed to increase his/her pension benefit due to additional years of service.

(3) The monthly retirement benefit will be credited to the member's option account the last day of the month.

(4) A member who participates in this plan shall be eligible to receive cost of living increases.

**(d) Interest.**

(1) The member's option account shall earn interest at a rate of two percent (2%) below the rate of return of the total investment portfolio of the System, but no less

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than the actuarial assumed interest rate established at the beginning of the fiscal year as certified by the actuary and approved by the Board in the yearly evaluation report of the actuary. This report is on a fiscal year basis ending on June 30.

(2) The Fund's annual rate of return shall be calculated and certified by the Board's financial consultant. The annual rate of return shall be for the fiscal year ending June 30.

(3) The interest shall be credited to the member's option account on an annual basis which is defined as fiscal year ending June 30. The amount of the interest credited shall be calculated at simple interest. The formula for calculating the interest shall be the amount of the deposit times the certified annual rate of return, less two percent (2%), divided by 365 days times the number of days the deposit was credited to the member's option account for the fiscal year.

(4) Each member shall receive an itemized statement at least on an annual basis beginning with interest credited at June 30, 1991.

(5) Upon completion of the five year term in the Oklahoma Police Deferred Option Plan or earlier termination of employment by the member, annual interest calculated through the last day of the month employed and certified by the Board's financial consultant will be credited to the member's option account provided the annual rate of return is greater than the actuarial assumed interest rate. If the rate of return is less than the actuarial assumed rate then the member's option account will be credited at the assumed interest rate of the last actuarial report.

~~(6) Once the member's option account reaches the maximum time of~~ When a member has participated in the Oklahoma Police Deferred Option Plan for five (5) years or at if the election of the member he/she terminates employment prior to the end of the five (5) year maximum years, the member's option account ceases to earn interest.

(7) At the conclusion of a member's participation in the Oklahoma Police Deferred Option Plan, the member must terminate employment and start receiving the member's accrued monthly retirement benefit from the System. Such termination has at all times included reemployment of a member by a participating municipality but only in a position not covered under the System or as a police chief. Thus, such a member would receive in-service distributions of such member's accrued monthly retirement benefit from the System.

(e) **Payment.**

(1) The member must make payment selection a minimum of thirty (30) days prior to termination of employment.

(2) The member may select a lump sum payment, equal to the member's option account, which will be paid directly to the member by the Oklahoma Police Deferred Option Plan. This payment will be made immediately after the last contribution has been received and interest applied following termination of employment.

~~(3) The member may select a direct rollover of the taxable portion of their distribution to a traditional IRA, an annuity, or another qualified employer plan. The traditional IRA or annuity provider or qualified employer plan which is selected by the member shall be the result of the member's own research and investigation. The taxable portion of the member's option account balance, will be transferred directly to the member's selected traditional IRA or annuity provider or qualified employer plan his or her distribution in accordance with OAC 550:1-7-5. If the member does not select a traditional IRA or an Eligible Retirement Plan as described in OAC 550:1-7-5, or an annuity provider or another qualified employer plan,~~ the member shall receive a lump-sum payment equal to the member's option account balance.

(4) The member may select an annuity to be provided by a third party. The Oklahoma Police Deferred Option Plan shall not be subject to any fees or charges from the annuity provider.

~~(45) Once the member's option account, equal to the payments to the account, has been paid to the member, or the member's traditional IRA or as a Direct Rollover or to the member's annuity provider, or another qualified employer plan,~~ the member shall not have any recourse against the Oklahoma Police Deferred Option Plan, ~~or~~ the Oklahoma Police Pension and Retirement System, its Executive Director and staff, and/or the Board.

~~(5) The Oklahoma Police Deferred Option Plan shall not be subject to any fees or charges from the traditional IRA or annuity provider or another qualified employer plan.~~

(f) **Beneficiaries.** If the participant dies during the period of participation in the Oklahoma Police Deferred Option Plan, a beneficiary may elect to receive a lump sum payment equal to the account balance of the participant. A beneficiary who is a surviving spouse of a member may elect a ~~direct rollover of the taxable portion~~ Direct Rollover of the account balance ~~to a traditional IRA or annuity in accordance with OAC 550:1-7-5.~~ If there is no beneficiary or if the beneficiary predeceases the participant a lump sum payment shall be paid to the estate of the participant.

[OAR Docket #03-664; filed 4-17-03]

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

[OAR Docket #03-665]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

550:20-1-2 [AMENDED]

**AUTHORITY:**

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

**DATES:**

**Comment period:**

January 15, 2003, through February 17, 2003

**Public hearing:**

February 19, 2003

**Adoption:**

February 19, 2003

**Submitted to Governor:**

February 20, 2003

**Submitted to House:**

February 20, 2003

**Submitted to Senate:**

February 20, 2003

**Gubernatorial approval:**

March 31, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 16, 2003.

**Final adoption:**

April 16, 2003

**Effective:**

June 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The amendments are for the purpose of implementing IRS requirements in accord with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). The amendments provide for a direct trustee-to-trustee transfer from one eligible retirement plan to another. The amendments also provide for the purchase of previous non-participating service through plan transfers.

Related statutes are 11 O.S. Section 50-111.2 and 11 O.S. Section 50-111.4.

**CONTACT PERSON:**

Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 27.

**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 JUNE 1, 2003:**

**550:20-1-2. Computation**

All purchases of transferred credited service pursuant to 11 O. S. Section 50-111.4, shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost, and any tables formulated for the purpose of determining such cost during each calendar year, shall be based on the actuarial assumptions utilized in the actuarial valuation report as of the preceding July 1.

(2) The actuarial value shall be based upon the member's age, salary and service at the time of purchase, together with the earliest age for retirement and actuarially projected salary at time of retirement. For purposes of this actuarial cost, it is assumed that all members are married at the time of retirement. If purchase is not made within 30 days of Board approval, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of this actuarial cost, the member's age shall be rounded up or down to the nearest birthday.

(4) For purposes of this actuarial cost, the mortality tables shall be formulated as a unisex table assuming post retirement mortality weighted 90% male and 10% female.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, his salary shall be annualized based upon the completed calendar months of payroll information.

(6) In lieu of installment payments (for a purchase where installment payments are otherwise allowed by Oklahoma state statutes), an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating service, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee-to-trustee transfer as authorized by the statutes governing the System.

(7) Effective July 1, 2003, in lieu of installment payments (for a purchase where installment payments are otherwise allowed by Oklahoma state statutes), an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating service, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee-to-trustee transfer from a Code Section 403(b) annuity, a governmental Code Section 457 plan, and/or a Code Section 401(a) qualified plan.

(8) Notwithstanding (6) and (7) of this subsection, purchases may be made by a cash lump sum payment, installment payments (where otherwise allowed by Oklahoma state statutes), and/or by trustee-to-trustee transfer as described in (6) and (7) of this subsection.

[OAR Docket #03-665; filed 4-17-03]

**TITLE 610. OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #03-674]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 5. Faculty Advisory Committee [REVOKED]
- 610:1-5-1 Purpose [REVOKED]
- 610:1-5-2 Membership [REVOKED]
- 610:1-5-3 Duties [REVOKED]
- 610:1-5-4 Operation guidelines [REVOKED]
- 610:1-5-5 Meetings [REVOKED]
- 610:1-5-6 Amendments [REVOKED]

**AUTHORITY:**

State Regents for Higher Education, OKLA. CONST. Art XII-A, § 1; 70 O.S., §§ 3101 et seq., and 3201.

**DATES:**

**Comment period:**

July 1, 2002 through July 31, 2002

**Public hearing:**

None held or requested

**Adoption:**

September 13, 2002

**Submitted to Governor:**

September 20, 2002

# Permanent Final Adoptions

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**Submitted to House:**

September 20, 2002

**Submitted to Senate:**

September 20, 2002

**Gubernatorial approval:**

October 10, 2002

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The Faculty Advisory Committee rule is an internal policy statement and does not meet the definition of a rule; therefore, it should remain as a Regent's policy, but be revoked as an administrative rule.

**CONTACT PERSON:**

Regina Switzer, Associate General Counsel, State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104, (405) 225-9335.

**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 MAY 27, 2003:**

## **SUBCHAPTER 5. FACULTY ADVISORY COMMITTEE [REVOKED]**

### **610:1-5-1. Purpose [REVOKED]**

(a) ~~The Oklahoma State Regents for Higher Education recognize the value of a formal structure for faculty input and a strengthened linkage to an important constituency faculty. Consequently, the State Regents have created a Faculty Advisory Committee to assist the State Regents.~~

(b) ~~The purpose of the Faculty Advisory Committee is to communicate to the Chancellor and the State Regents the views and interests of all Oklahoma college and university faculty on those issues that relate to the constitutional and statutory responsibilities of the State Regents. In representing faculty, the Faculty Advisory Committee shall attempt to accurately represent the positions of faculty and develop the best proposals and recommendations to the State Regents.~~

### **610:1-5-2. Membership [REVOKED]**

(a) ~~The Faculty Advisory Committee consists of seven members elected by tier by the State Faculty Assembly at its fall annual meeting and appointed by the Chancellor. Guidelines for election of Faculty Advisory Committee members by a State Faculty Assembly will be as follows:~~

(1) ~~Election of the two Faculty Advisory Committee members from the two-year colleges will be by a delegation of individuals representing each of the 13 two-year colleges and the Technical Branch in Oklahoma City and the Technical Branch in Okmulgee.~~

(2) ~~Election of the two Faculty Advisory Committee members from the four-year universities will be by a delegation of individuals representing each of the 10 four-year universities.~~

(3) ~~Election of the two Faculty Advisory Committee members from the two comprehensive universities will be by delegates from the two comprehensive universities and delegates from the Health Sciences Center, the College of Osteopathic Medicine and Surgery, and the College of Veterinary Medicine.~~

(4) ~~Election of the one Faculty Advisory Committee member from the independent college/university sector will be by a delegation of individuals representing each of the 15 independent colleges and universities in Oklahoma.~~

(5) ~~Delegates from the colleges and universities in Oklahoma shall be the current faculty organization president or its immediate past president.~~

(6) ~~The Assembly shall meet once a year in the fall for the purpose of electing representatives to the Faculty Advisory Committee.~~

(b) ~~Members will be selected as follows:~~

(1) ~~Two members will be elected at large to represent the comprehensive universities in The Oklahoma State System of Higher Education.~~

(2) ~~Two members will be elected at large to represent the regional universities in the State System.~~

(3) ~~Two members will be elected at large to represent the junior colleges in the State System.~~

(4) ~~One member will be elected at large to represent the accredited independent colleges and universities in the state.~~

(c) ~~The term of office of the Faculty Advisory Committee member is two years. Until such time as formal elections are held, interim members will be selected by an informal faculty assembly in accordance with provisions as set forth in (b) of this Section. Such interim members shall hold office until replaced by members elected as follows:~~

(1) ~~The first elections in fall 1991 to the Faculty Advisory Committee as provided in (a) of this Section will be to fill the following positions to serve a two-year term:~~

- (A) ~~one comprehensive university position,~~
- (B) ~~one four-year university position, and~~
- (C) ~~one two-year college position.~~

(2) ~~The second elections in fall 1992 to the Faculty Advisory Committee as provided in (a) of this Section will be to fill the following positions:~~

- (A) ~~one comprehensive university position,~~
- (B) ~~one four-year university position,~~
- (C) ~~one two-year college position, and~~
- (D) ~~one independent college/university position.~~

(d) ~~A member must be a faculty member and should at the time of selection be a present or immediate past officer of the institution's faculty organization. In the event an institution does not have an official faculty organization, an individual may still represent an institution with the consent and support of the faculty of that institution. A member must be employed by the type of institution that he/she is selected to represent.~~

- (e) Terms of office will be from January 1 to December 31.
- (f) A member who wishes to resign before his/her term expires must notify the Chancellor and the Faculty Advisory Committee in writing. Replacements to fill vacant, unexpired terms may be made by the Chancellor consistent with the rules in this Chapter and with the advice of the Faculty Advisory Committee.
- (g) A member must be removed from office if he/she does not continue to meet the requirements listed in the bylaw provisions during the term of office.
- (h) The Faculty Advisory Committee members shall have the power to recommend to the General Faculty Assembly removal of a fellow Faculty Advisory Committee member for violations of the provisions of this Chapter.

**610:1-5-3. Duties [REVOKED]**

- (a) Members of the Faculty Advisory Committee are encouraged to visit and become familiar with other institutions in the state.
- (b) The Faculty Advisory Committee will serve as an avenue for the faculty community to express input to the State Regents.
- (c) The Faculty Advisory Committee will elect an individual to serve as chair according to the following guidelines:
  - (1) A chair will be elected from the comprehensive university members to serve January through April.
  - (2) A chair will be elected from the four-year university members to serve May through August.
  - (3) A chair will be elected from the two-year college members to serve September through December.
- (d) The chair will work with the State Regents' office through a staff liaison designated by the Chancellor.
- (e) The Faculty Advisory Committee will elect a reporter at its first meeting following election to take official minutes of the Faculty Advisory Committee meetings and maintain a file of Faculty Advisory Committee actions.
- (f) Members of the Faculty Advisory Committee will be called upon by the Chancellor to provide informal counsel and advice and to make presentations at public hearings, legislative meetings, etc.
- (g) The Faculty Advisory Committee, by a majority vote of its members, may submit recommendations to the Chancellor on matters relating to the duties and responsibilities of the State Regents.
- (h) A representative of the Faculty Advisory Committee is encouraged to attend regularly scheduled meetings of the State Regents.
- (i) The Faculty Advisory Committee will work with the Chancellor and the designated liaison in developing an annual list of priorities and goals for rendering advice to the State Regents.
- (j) The Faculty Advisory Committee will submit an annual written report of its activities to the Chancellor and will also maintain regular contact with the state's faculty organizations to apprise them of significant developments.
- (k) Clerical and administrative assistance to the Faculty Advisory Committee will be provided by the Chancellor's office and the designated liaison in the conduct of the Faculty Advisory Committee business.

- (l) The chair or designated spokesman for the Faculty Advisory Committee may develop a written and oral presentation to the State Regents on at least a quarterly basis or more frequently as needed. Written reports will be submitted in timely fashion to the Chancellor for inclusion in the official bound agenda for the Regents. For purposes of compliance with the state's Open Meeting Act [25 O.S., § 301 et seq.], reports and recommendations for Regents' action should be submitted to the Chancellor at least three weeks prior to State Regents' meetings.

**610:1-5-4. Operation guidelines [REVOKED]**

The Faculty Advisory Committee will operate under guidelines established by the Faculty Advisory Committee with the concurrence of the Chancellor.

**610:1-5-5. Meetings [REVOKED]**

- (a) A schedule of regular meetings of the Faculty Advisory Committee will be filed annually with the State Regents' office.
- (b) A record of the Faculty Advisory Committee meetings shall be kept on official file in the office of the State Regents.
- (c) An individual designated by the Chancellor shall be invited to attend official meetings of the Faculty Advisory Committee.

**610:1-5-6. Amendments [REVOKED]**

The provisions of this Subchapter may be amended by a majority vote of the Faculty Advisory Committee and concurrence of the Chancellor.

[OAR Docket #03-674; filed 4-18-03]

**TITLE 610. OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

[OAR Docket #03-673]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 13. Oklahoma Teacher Education Loan Program [REVOKED]
- 610:25-13-1. Purpose [REVOKED]
- 610:25-13-2. Eligibility [REVOKED]
- 610:25-13-3. Application procedure [REVOKED]
- 610:25-13-4. Terms and conditions of loans [REVOKED]
- 610:25-13-5. Annual loan limit [REVOKED]
- 610:25-13-6. Aggregate loan limit [REVOKED]
- 610:25-13-7. Study load requirements [REVOKED]
- 610:25-13-8. Certification of compliance [REVOKED]

**AUTHORITY:**

State Regents for Higher Education, 70 O.S. § 698.2;

**DATES:**

**Comment period:**

October 15, 2002 through November 15, 2002

**Public hearing:**

None held or requested

**Adoption:**

December 5, 2002

# Permanent Final Adoptions

**Submitted to Governor:**

December 13, 2002

**Submitted to House:**

December 13, 2002

**Submitted to Senate:**

December 13, 2002

**Gubernatorial approval:**

January 21, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

**Final adoption:**

March 25, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The 1985 Oklahoma Legislature created the Oklahoma Teacher Education Loan Program (OTELP) and authorized the State Regents to provide forgivable loans to students who declared their intention to serve the State of Oklahoma by teaching in the public schools in specific subject areas that were declared to be teacher shortage areas. The 2001 Oklahoma Legislature repealed the statutory language (HB 1499 c. 201 § 12, eff. July 1, 2001) authorizing OTELP. With the statutory language for the OTELP repealed, the APA rules for the program are no longer required.

**CONTACT PERSON:**

Regina Switzer, Associate General Counsel, State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104, (405) 225-9335.

**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 MAY 27, 2003:**

## **SUBCHAPTER 13. OKLAHOMA TEACHER EDUCATION LOAN PROGRAM [REVOKED]**

### **610:25-13-1. Purpose [REVOKED]**

(a) ~~Senate Bill No. 368 of the 1984 Oklahoma Legislature appropriated funds to the Oklahoma State Regents for Higher Education to ". . . establish a program for making available forgivable loans. . . to students enrolled in a major course of study at the graduate or undergraduate level who declare an intention to serve and who subsequently serve this state by teaching in the subject areas of mathematics, science, computer learning, or foreign languages at the elementary or secondary level in the public schools of this state. . . . The Oklahoma State Regents for Higher Education are authorized to provide student loans to persons who are enrolled at institutions of higher education in this state for the purposes specified (above). The loans shall be applied to the cost of said education. It is the intent of the Oklahoma Legislature that only those undergraduate and graduate students who are enrolled full time be eligible for said loans." [70 O.S., § 698.2 (A) and (B)]~~

(b) ~~The implied purpose of this legislation is to make forgivable postsecondary education loans available to undergraduates and graduates who demonstrate an interest in teaching in the fields in which there is a teacher shortage as specified in (a)~~

~~of this Section. Further, the purpose is to enable and encourage those individuals to pursue elementary or secondary level teaching careers in the public schools of Oklahoma.~~

### **610:25-13-2. Eligibility [REVOKED]**

~~Provisions for eligibility for the Oklahoma Teacher Education Loan Program are as follows:~~

- ~~(1) Eligibility is restricted to Oklahoma resident students.~~
- ~~(2) Individuals must meet the objective standards of education for admission to an approved teacher education program at a higher education institution in Oklahoma.~~
- ~~(3) Eligible individuals must have a grade point average of at least 2.5 on a 4.0 scale in courses taken while enrolled full time at an institution of higher education and completed not later than the semester before the term in which the loan is granted.~~
- ~~(4) Certification of applicant eligibility must be provided by the participating institution.~~
- ~~(5) Individuals must sign a statement of intent to teach in an Oklahoma public school in a teaching field of critical shortage.~~
- ~~(6) Eligible individuals must comply with all provisions in this Section as are required.~~

### **610:25-13-3. Application procedure [REVOKED]**

~~Application forms for the Oklahoma Teacher Education Loan Program may be obtained from the office of financial aid or the administrative office of the college, school, or department of education at one of Oklahoma's teacher education preparation institutions of higher education or from the Oklahoma State Regents for Higher Education, 500 Education Building, State Capitol Complex, Oklahoma City, Oklahoma 73105-4503.~~

### **610:25-13-4. Terms and conditions of loans [REVOKED]**

~~Senate Bill No. 228 authorizes the Oklahoma State Regents for Higher Education to forgive eligible Oklahoma Teacher Education loans to . . . "persons who actually render service as teachers in the public schools of this state if not less than seventy five percent (75%) of the teaching assignment is in a subject area specified in subsection A of this section. Loan forgiveness shall be one (1) year's loan for each school year of service rendered. One half ( $\frac{1}{2}$ ) school year of service shall be required for forgiveness of a summer term loan." [70 O.S., § 698.2] "The first year of teaching will forgive the first year's loan; the second year of teaching will forgive the second year's loan; and the third year of teaching will forgive the third year's loan." [O.S.L. 1985, c. 354 § 4]~~

### **610:25-13-5. Annual loan limit [REVOKED]**

~~Provided that funds are available, loans of up to \$3,400 per academic year (two semesters or two trimesters) and up to \$1,100 for the summer term may be made to students pursuing~~

~~full-time study under the Oklahoma Teacher Education Loan Program.~~

**610:25-13-6. Aggregate loan limit [REVOKED]**

~~No person who is participating in the Oklahoma Teacher Education Loan Program shall receive more than three (3) annual loans nor more than three (3) summer term loans for an aggregate loan amount of \$13,500.~~

**610:25-13-7. Study load requirements [REVOKED]**

~~Borrowers participating in the Oklahoma Teacher Education Loan Program must be enrolled as full-time students at their respective institutions and must maintain satisfactory progress toward the completion of their academic program as certified by institutional officials.~~

**610:25-13-8. Certification of compliance [REVOKED]**

~~Guidelines for certification of compliance are as follows:~~

- ~~(1) Proper certification that the in-school borrowers participating in the Oklahoma Teacher Education Loan Program have fully met the study load requirements must be received by the State Regents' office prior to each disbursement.~~
- ~~(2) In-school certification forms will be furnished to the borrowers by the State Regents' office.~~
- ~~(3) Persons who actually render service as teachers in the public schools must submit to the State Regents' office a certificate for teaching service credit at the end of each contract year.~~
- ~~(4) The in-service certification forms will be provided to the borrowers by the State Regents' office.~~
- ~~(5) It will be the individual borrower's responsibility to ensure that the appropriate forms are properly signed~~

[OAR Docket #03-673; filed 4-18-03]

**TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT  
CHAPTER 15. FISCAL, PERSONNEL AND GENERAL OPERATIONS**

[OAR Docket #03-734]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 35. Revenue Bond and Note Issuance [NEW]
- 725:15-35-1 [NEW]
- 725:15-35-2 [NEW]
- 725:15-35-3 [NEW]
- 725:15-35-4 [NEW]
- 725:15-35-5 [NEW]

**AUTHORITY:**

Oklahoma Tourism and Recreation Commission; Section 1847.1 of Title 74 of the Oklahoma Statutes.

**DATES:**

**Comment period:**

January 15, 2003 through February 18, 2003

**Public hearing:**

February 18, 2003

**Adoption:**

February 20, 2003

**Submitted to the Governor:**

February 24, 2003

**Submitted to the House:**

February 24, 2003

**Submitted to the Senate:**

February 24, 2003

**Gubernatorial approval:**

April 1, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2003

**Final adoption:**

April 17, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 35. Revenue Bond and Note Issuance [NEW]

725:15-35-1 [NEW]

725:15-35-2 [NEW]

725:15-35-3 [NEW]

725:15-35-4 [NEW]

725:15-35-5 [NEW]

**Gubernatorial approval:**

August 13, 2002

**Register publication:**

20 Ok Reg 3025

**Docket number:**

02-1307

**INCORPORATIONS BY REFERENCE:**

NA

**ANALYSIS:**

These rules provide the basis for issuing revenue bonds and notes. *Sections 1881 through 1886 of Title 74 of the Oklahoma Statutes (SB 1271, 2002 Legislative Session)* provide the authorization for the Oklahoma Tourism and Recreation Commission to issue revenue bonds and notes. The rules serve to articulate the criteria, requirements, qualifications, and procedures for the issuance of such revenue bonds and notes.

**CONTACT PERSON:**

Betty Koehn, Director, Administrative Services, OTRD, 100 N. Robinson, Suite 300, Oklahoma City, OK 73102, 405-521-4031.

**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 MAY 27, 2003:**

**SUBCHAPTER 35. REVENUE BOND AND NOTE ISSUANCE**

**725:15-35-1. Authority**

The Oklahoma Tourism and Recreation Commission may make and issue notes and bonds, and pledge revenues of the Department and funds as may be provided by law for such payments pursuant to the provisions contained in Sections 1881 through 1886 of Title 74 of the Oklahoma Statutes for furtherance of its lawful purposes.

# Permanent Final Adoptions

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## **725:15-35-2. Project selection criteria**

The projects authorized by the Commission shall be based on the following criteria:

- (1) project is recommended by the Executive Director of the Oklahoma Tourism and Recreation Department,
- (2) demonstrates the ability to generate revenue or supports revenue generating facilities under the jurisdiction of the Commission,
- (3) provides for the maintenance, construction, or improvement of state facilities under the jurisdiction of the Commission,
- (4) determined to be of statewide significance in purpose,
- (5) has a useful life that equals or exceeds the anticipated debt-service or repayment period,
- (6) is located where the Commission has sufficient ownership of the land or a sufficient balance of leasehold interest or can obtain a sufficient extension of leasehold interest to allow amortization of the debt,
- (7) is of a size and scope that is viable to include in a financing package and does not exceed the ability of the Department to meet debt service or repayment obligations, without sacrificing on-going operation and maintenance needs, and
- (8) is in the overall best interest of the Oklahoma Tourism and Recreation Department.

## **725:15-35-3. Identification of projects**

(a) The Commission may develop a list of proposed projects that will be considered for financing under the Commission's financing authority. The list shall be utilized when seeking underwriter, bond counsel and other services and advice relevant to the proposed financing. Any number of projects may be included in a respective issuance. The list shall include but is not limited to the following information.

- (1) the name of the project including location and short title,
- (2) the purpose and justification for such project,
- (3) estimated cost of the project, including design costs if necessary,
- (4) a description of how the project will be done, whether bid or other means of performance,
- (5) the anticipated revenue generated by the project to be dedicated to the repayment of debt service assigned to the issue notes and bonds,
- (6) the source of funds to be used for the repayment of such debt service assigned to the issuance of the notes and bonds,
- (7) an estimation of the useful life of the project, and
- (8) an approximation of the operating or maintenance costs that will be associated with the project.

(b) The list of proposed projects may be adjusted by the Commission as needed to obtain a successful issuance.

## **725:15-35-4. Preliminary resolution**

(a) The Commission may provide a preliminary resolution as appropriate for the issuance of revenue notes and bonds for

lawful purposes at any scheduled meeting held pursuant to the Open Meetings Act.

(b) The resolution may provide for the following:

- (1) authorization for the Oklahoma Tourism and Recreation Department to coordinate with the State Bond Advisor in developing material for a proposed issuance, including but not limited to all requirements of the Oklahoma Bond Oversight and Reform Act,
- (2) authorization for the Oklahoma Tourism and Recreation Department to prepare requests for proposals and other solicitations for bond counsel, underwriters and other services as necessary and appropriate for consideration of bond or note issuance, and
- (3) other acts as necessary and appropriate to prepare a proposal for an initial issuance, a refunding, redemption or other act allowable by law.

(c) Any such resolution brought before the Commission requires a majority vote of all members of the Commission for passage.

## **725:15-35-5. Resolution**

(a) The Commission shall provide a resolution as appropriate for the official issuance of revenue notes and bonds for lawful purposes at any scheduled meeting held pursuant to the Open Meetings Act.

(b) The resolution may provide for the following:

- (1) a description of the type, form and character of the note(s) or issuance and the amount,
- (2) authorizations as necessary for the execution of the indenture and all other instruments and documents relative to the sale and issuance of bonds or notes,
- (3) approval of official statements, declarations or other published material,
- (4) setting of interest rate parameters and duration of repayment,
- (5) appointment of trustee bank, paying agent and other appointments as necessary and appropriate, and
- (6) other acts as necessary and appropriate to implement the desired action, whether an initial issuance, a refunding, redemption or other act allowable by law.

(c) Any such resolution brought before the Commission requires a majority vote of all members of the Commission for passage.

*[OAR Docket #03-734; filed 4-21-03]*

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## **TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 15. FISCAL, PERSONNEL AND GENERAL OPERATIONS**

*[OAR Docket #03-729]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 37. Pay Incentive Plan [NEW]  
725:15-37-1 [NEW]

725:15-37-2 [NEW]

**AUTHORITY:**

Oklahoma Tourism and Recreation Commission; Section 1847.1 of Title 74 of the Oklahoma Statutes.

**DATES:**

**Comment period:**

January 15, 2003 through February 18, 2003

**Public hearing:**

February 18, 2003

**Adoption:**

February 20, 2003

**Submitted to the Governor:**

February 24, 2003

**Submitted to the House:**

February 24, 2003

**Submitted to the Senate:**

February 24, 2003

**Gubernatorial approval:**

April 1, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2003

**Final adoption:**

April 17, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 37. Pay Incentive Plan [NEW]

725:15-37-1 [NEW]

725:15-37-2 [NEW]

**Gubernatorial approval:**

January 3, 2003

**Register publication:**

20 Ok Reg 560

**Docket number:**

03-88

**INCORPORATIONS BY REFERENCE:**

NA

**ANALYSIS:**

These rules provide the basis for allowing the Commission to develop and implement pay incentive plans for various operations of the Department to improve financial performance. *Section 1847.1 of Title 74 of the Oklahoma Statutes (SB 1271, 2002 Legislative Session)* provides the authorization for the program. The rules serve to articulate the purpose and procedures for the creation and implementation of the program.

**CONTACT PERSON:**

Betty Koehn, Director, Administrative Services, OTRD, 100 N. Robinson, Suite 300, Oklahoma City, OK 73102, 405-521-4031.

**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 MAY 27, 2003:**

**SUBCHAPTER 37. PAY INCENTIVE PLAN**

**725:15-37-1. Purpose**

The purpose of this subchapter is to establish an incentive pay program for eligible Division of Parks, Division of Lodges, Golf Operations and Oklahoma Today Magazine employees to be based on improved financial performance of the facilities and the magazine.

**725:15-37-2. Annual Incentive Pay Plan**

(a) Each fiscal year, the Executive Director shall submit to the Commission for its approval a proposed incentive pay plan for the subsequent fiscal year.

(b) The incentive pay plan shall specify:

(1) the financial and other performance goals of each facility or the magazine,

(2) the method by which a facility's or the magazine's total incentive pay shall be calculated based on the degree of success in attaining the financial performance goals,

(3) employee positions that will be eligible to receive incentive pay,

(4) the method by which each eligible employee's share of the facility's or magazine's total incentive pay will be calculated, and

(5) the date on which incentive pay relating to the subject year shall become payable to eligible employees.

[OAR Docket #03-729; filed 4-21-03]

**TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT  
CHAPTER 25. STATE LODGES OPERATIONS**

[OAR Docket #03-730]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 21. Lodge Division Employee Pay Incentive Plan [REVOKED]

725:25-21-1. Purpose [REVOKED]

725:25-21-2. Guidelines [REVOKED]

725:25-21-3. Eligibility [REVOKED]

725:25-21-4. Special shares [REVOKED]

725:25-21-5. Distribution [REVOKED]

**AUTHORITY:**

Oklahoma Tourism and Recreation Commission; Section 1847.1 of Title 74 of the Oklahoma Statutes.

**DATES:**

**Comment period:**

January 15, 2003 through February 18, 2003

**Public hearing:**

February 18, 2003

**Adoption:**

February 20, 2003

**Submitted to the Governor:**

February 24, 2003

**Submitted to the House:**

February 24, 2003

**Submitted to the Senate:**

February 24, 2003

**Gubernatorial approval:**

April 1, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2003

**Final adoption:**

April 17, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 21. Lodge Division Employee Pay Incentive Plan [REVOKED]

# Permanent Final Adoptions

- 725:25-21-1. Purpose [REVOKED]
- 725:25-21-2. Guidelines [REVOKED]
- 725:25-21-3. Eligibility [REVOKED]
- 725:25-21-4. Special shares [REVOKED]
- 725:25-21-5. Distribution [REVOKED]

## Gubernatorial approval:

January 3, 2003

## Register publication:

20 Ok Reg 560

## Docket number:

03-87

## INCORPORATIONS BY REFERENCE:

NA

## ANALYSIS:

Legislation during the 2002 Legislative Session authorizing the Oklahoma Tourism and Recreation Commission (Commission) to develop and implement pay incentive plans for employees of the Divisions of Parks, Lodges, Golf Operations and Oklahoma Today Magazine (SB 1271, 2002 Legislative Session). The revocation of Subchapter 21 of Chapter 25 of Title 725 of the Oklahoma Administrative Code is necessary to remain consistent with the rules in new Subchapter 37 of Chapter 15 of Title 725 of the Oklahoma Administrative Code also adopted by the Commission and approved by the Governor and Legislature during the 2003 Legislative Session.

## CONTACT PERSON:

Betty Koehn, Director, Administrative Services, OTRD, 100 N. Robinson, Suite 300, Oklahoma City, OK 73102, 405-521-4031

**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 MAY 27, 2003:**

## SUBCHAPTER 21. LODGE DIVISION EMPLOYEE PAY INCENTIVE PLAN [REVOKED]

### 725:25-21-1. Purpose [REVOKED]

The purpose of this subchapter is to recognize and reward employees for work performance that results in increased revenue and improved financial condition of State Lodges authorized by 74 O.S., Section 1847.1 (A)(13).

### 725:25-21-2. Guidelines [REVOKED]

- (a) Total incentive payments will not exceed the increase in Lodge Division revenues or twenty percent (20%) of the improved financial condition, whichever is less.
- (b) Payments will be made quarterly based on the preceding 12 months' performance compared to the current year's performance with the corresponding period in the previous fiscal year (Legislation established FY 93 as the base year).
- (c) A lodge must meet performance benchmarks for its employees to be eligible for incentive pay.
- (d) Benchmarks will be established by the Executive Director upon recommendation of the Director of Lodges and the Department Comptroller.
- (e) If a lodge fails to meet its benchmarks, that portion of the incentive pay will not be distributed.

### 725:25-21-3. Eligibility [REVOKED]

- (a) Every permanent full time employee will receive an equal payment or share except for award of special shares as provided for in OAC 725:25-21.4.
- (b) Pro-rated payments will be made to permanent part time and project employees.
- (c) Pro-rated payments will be made to seasonal employees provided that the employee has fulfilled their employment contract.
- (d) Any employee against whom formal disciplinary action was taken during the period will not be eligible to receive payment for that quarter.
- (e) The Executive Director, Director of Lodges, and Department Comptroller, will not be eligible for pay incentive shares under this plan.

### 725:25-21-4. Special shares [REVOKED]

- (a) Each lodge may nominate up to five (5) individuals for an extra or special share.
- (b) Nominations will be reviewed by the Executive Director.
- (c) The Commission may approve awards of an extra or special share if it is determined the individual made an exceptional contribution to financial improvement or customer satisfaction.

### 725:25-21-5. Distribution [REVOKED]

- (a) The Commission will review and approve all employee payments to be made under this plan before distribution is made to employees.
- (b) The first pay incentive distribution under this plan will not be made before July 1, 1994.

[OAR Docket #03-730; filed 4-21-03]

## TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #03-731]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 18. Special Use Areas

725:30-18-1. State Capitol Park [REVOKED]

725:30-18-4. Quartz Mountain State Park [REVOKED]

### AUTHORITY:

Oklahoma Tourism and Recreation Commission; Section 1847.1 of Title 74 of the Oklahoma Statutes.

### DATES:

#### Comment period:

January 15, 2003 through February 18, 2003

#### Public hearing:

February 18, 2003

#### Adoption:

February 20, 2003

#### Submitted to the Governor:

February 24, 2003

#### Submitted to the House:

February 24, 2003

#### Submitted to the Senate:

February 24, 2003

**Gubernatorial approval:**

April 1, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2003

**Final adoption:**

April 17, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

NA

**INCORPORATIONS BY REFERENCE:**

NA

**ANALYSIS:**

The rules conform to the statutory changes passed by the Legislature and approved by the Governor during the 2001 Legislative Session. In accordance with SB 567, 2001 Legislative Session, the control, operation, and maintenance of the State Capitol Park were transferred to the Department of Central Services effective July 1, 2002. Further, the control and operation of the Quartz Mountain State Park, Resort, and Conference Center were transferred to the Regents for Higher Education effective January 1, 2003. The rules delete all references to these properties as under the control of the Tourism and Recreation Commission.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2003:**

**SUBCHAPTER 18. SPECIAL USE AREAS**

**725:30-18-1. State Capitol Park [REVOKED]**

(a) ~~**Boundaries and jurisdiction.** "The State Capitol Park shall consist of all portions of the State Capitol grounds and within such boundaries as are located in the State Capitol complex, to include the Governor's Mansion and all properties within the public right of way along Lincoln Boulevard north from the south boundary line of Northeast 13th Street to the north boundary line of Northeast 28th Street and along Business Route 66, known as Northeast 23rd Street, from the east edge of Santa Fe Street east to the west edge of Kelley Avenue in Oklahoma City, Oklahoma, as designated on the amended plot in the office of the Secretary of State as File Number 155 in the State Property Records"~~

(b) ~~**Maintenance and operations.** "The Oklahoma Tourism and Recreation Department, Division of State Parks shall be responsible for the maintenance and operations of the State Capitol Park" [74:1811.4(B)].~~

(c) ~~**Definitions of terms.** For the purpose of this section the following definitions for State Capitol Park and associated areas and functions shall apply:~~

(1) ~~**"Demonstrations"** means and includes demonstrating, picketing, speech making, marching, holding of vigils and other like forms of conduct which involve the communication of expression of views, engaged in by one or more persons, the conduct of which has the effect, intent or propensity, to draw a crowd or onlookers. This term does not include casual use by visitors, tourists~~

~~or persons which do not have an intent or propensity to attract a crowd or onlookers.~~

(2) ~~**"Special events"** means and includes pageants, celebrations, historical reenactments, exhibition, parades, fairs, festivals, and similar events which are not demonstrations as defined in this section, and which are engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term also does not include casual use by visitors, tourists or persons which do not have an intent or propensity to attract a crowd or onlookers.~~

(d) ~~**Special events and demonstrations.**~~

(1) ~~The holding or conducting of any demonstration, or special event upon the grounds of the State Capitol complex is prohibited except by permit.~~

(2) ~~Permit applications are available at the park office and must be received by the park manager no later than 14 days prior to the date of the event or activity for special events and 48 hours for demonstrations. Permit applications shall only be received during the hours of 8:00 a.m. - 5:00 p.m., Monday through Friday, excluding holidays at the State Capitol Park office located at 2221 Culbertson Drive, Oklahoma City, Oklahoma 73105.~~

(3) ~~No more than 2 events shall be authorized for any 1 day within the same area of the park unit. Such area shall be defined by the park manager.~~

(4) ~~Events or activities for "commercial" purposes are prohibited. For the purpose of this section, the term "commercial activity" shall mean an activity undertaken with a primary purpose of selling or offering for sale merchandise, goods, food or services for profit for the benefit of an individual or business entity organized for profit. This section shall not preclude the sale of merchandise, food, goods or services sold by state agencies, independent state contractors or nonprofit organizations.~~

(5) ~~All facilities, equipment, and temporary structures shall be removed immediately following the conclusion of the event. Extension may be granted at the discretion of the park manager for 24 hours maximum.~~

(6) ~~No person shall carry any support for signs, placards or banners which is larger than 3/4 of an inch in diameter at its largest point and shall extend no longer than 48 inches in length.~~

(A) ~~All handles and supports shall be made of wood.~~

(B) ~~All signs shall be hand-carried. The fastening or leaning of any sign, banner or placard to any building, tree, vehicle or structure is prohibited.~~

(7) ~~Permit application may be denied and shall so state the reason for denial when it is determined that:~~

(A) ~~Another event or activity has previously been approved for the same location, date and time.~~

(B) ~~It reasonably appears that the proposed event or activity will pose a clear and present danger to public health and safety.~~

(C) ~~The proposed event or activity is of such nature or duration that it can not be reasonably accommodated for.~~

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- (d) ~~The permit application proposes activities contrary to any of the provisions of this section or applicable state and federal laws.~~
- (e) **Prohibited activities.** The following is prohibited:
- (1) ~~Audio devices, including radios, loud speakers, public address systems and musical instruments which are disturbing to others, except when authorized by permit as defined in this section.~~
  - (2) ~~Injuring, removing, molesting, burning or vandalizing any botanical, paleontological, archaeological, historical feature, or structure.~~
  - (3) ~~The kindling of fires of any kind.~~
  - (4) ~~Discharging or setting off fireworks except during holidays and special events when authorized by permit.~~
  - (5) ~~Assembling or congregating singly or in groups in such a way as to obstruct sidewalks, walkways, elevators, or entrances and exits to buildings.~~
  - (6) ~~Carrying or possessing firearms, explosives, clubs, missiles, chemicals, incendiary device, or any like device, or any object capable of causing injury to any person or property.~~
  - (7) ~~The placement, setting up or erection of tents, sleeping bags, bed rolls, or bedding of any kind for the purpose of camping or remaining overnight.~~
  - (8) ~~Throwing stones, bottles or other objects capable of injuring any person or property.~~
- (f) **Penalties.** ~~All rules defined in this chapter shall apply to the State Capitol Park. Violating any rules pursuant to this section or chapter may result in the suspension or revocation of a permit, use privilege or any other penalties prescribed by state law.~~
- (g) **Primary law enforcement agency.** ~~The Department of Public Safety shall be the primary law enforcement agency within State Capitol Park and shall enforce and supervise the enforcement of all parking, traffic, criminal laws therein and the rules set forth in this chapter. This shall not be construed to divest the City of Oklahoma City of jurisdiction relating to the enforcement of any law or ordinance within said park except the enforcement of laws regarding vehicle parking which shall be vested exclusively in the Department of Public Safety [74:1811.4C].~~

## 725:30-18-4. Quartz Mountain State Park [REVOKED]

~~Entering Area III on the north shore of Quartz Mountain State Park with any motorized vehicle or device (except for emergencies authorized by the park manager) which may disturb Bald Eagles or their habitat from October 1 through March 31 each year is prohibited.~~

[OAR Docket #03-731; filed 4-21-03]

## TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #03-732]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 22. Private Concessions [AMENDED]

725:30-22-1. [AMENDED]

725:30-22-1.1 [NEW]

725:30-22-2. [AMENDED]

725:30-22-3. [AMENDED]

725:30-22-4. [NEW]

725:30-22-5. [NEW]

725:30-22-6. [NEW]

725:30-22-7. [NEW]

### AUTHORITY:

Oklahoma Tourism and Recreation Commission; Section 1847.1 of Title 74 of the Oklahoma Statutes.

### DATES:

#### Comment period:

January 15, 2003 through February 18, 2003

#### Public hearing:

February 18, 2003

#### Adoption:

February 20, 2003

#### Submitted to the Governor:

February 24, 2003

#### Submitted to the House:

February 24, 2003

#### Submitted to the Senate:

February 24, 2003

#### Gubernatorial approval:

April 1, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2003

#### Final adoption:

April 17, 2003

#### Effective:

May 27, 2003

#### SUPERSEDED EMERGENCY ACTIONS:

NA

#### INCORPORATIONS BY REFERENCE:

NA

#### ANALYSIS:

The rules update the lease concession program and clarify general lease requirements and other operational issues to maintain compliance with state law. The rule describes the Department's review for determining the need for the operation as well as the process for bidding, evaluating, and recommending the award of lease contracts. General requirements applicable to the lessee are noted along with the authority for modification of the leases. The rules will enhance the Concession Lease Program and will encourage appropriate expansion.

#### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2003:**

## SUBCHAPTER 22. PRIVATE CONCESSIONS CONCESSION LEASES

**725:30-22-1. Purpose and authority**

- (a) The purpose of this subchapter shall be to define the process in which ~~private concessions~~ concession leases located upon Department property are examined, competitively bid, awarded and ultimately leased to ~~private parties, or business entities.~~
- (b) In accordance with state law, the Oklahoma Tourism and Recreation Commission (Commission) is authorized to lease lands and facilities for the promoting of the public use of parks [74:1847.1(12)].
- (c) Authority concerning concession leases may be delegated to the Executive Director of the Oklahoma Tourism and Recreation Department (Department) pursuant to law.

**725:30-22-1.1. Examination**

- (a) Prior to issuing an invitation to bid (ITB), for a concession lease, a determination will be made whether the proposed operation would be a desirable addition to the Department. Department staff shall make this determination after an analysis of the following considerations:
  - (1) Economic viability.
  - (2) Environmental impact.
  - (3) Impact on the property infrastructure.
  - (4) Compatibility with the overall property and its nature.
  - (5) Benefits to the park visitor and the citizens of Oklahoma, and
  - (6) Impact on and compatibility with other concession leases.
- (b) The Department will consult with the owner of the property, if other than the state, to assure that the proposed concession operation is agreed to by the property owner.
- (c) If the concession operation has been proposed by other than Department staff, the Department may require that the proposing party provide a feasibility study or other analysis for the proposed concession lease, which study or analysis is prepared by a reputable and experienced firm or organization agreeable to the Department. The feasibility study or other analysis may be used to aid the Department in making its determination regarding the proposed concession lease. The expense for preparing the feasibility study or other analysis will be borne by the proposing party. The content of the feasibility study shall be kept confidential to the extent allowable by Oklahoma law.
- (d) The party who proposes a concession lease or provides a feasibility study or other analysis acquires no right or preference to be awarded any concession lease resulting from the proposal, study or analysis.
- (e) The determination of the Department whether to proceed with bidding an ITB for a proposed concession lease shall rest solely with the Department. Such decision shall not be subject to the Administrative Procedures Act.

**725:30-22-2. Bidding process**

The Department shall competitively bid a property or facilities for a concession lease as follows:

- (1) A bid package shall be prepared by the Department which shall include the following:
  - (A) Instructions to ~~offerers~~ bidders which ~~defines~~ define the important times and dates of the bidding process.
  - (B) ~~The A statement of the process by which bid bids packages shall be awarded, including the method of evaluation.~~
  - (C) ~~Defines the details~~ Explanation of the reasons for bid rejection.
  - (D) An invitation to bid (ITB) form which includes space for the prospective bidder to propose what rents will be paid; what services will be provided; and a place requirement for the ~~offerers~~ bidder's signature, date and notary public all of which shall be mandatory requirements.
  - (E) A required ~~requirement requesting a financial statement, listing experience and background, and an operation and management proposal.~~
  - (F) An operation and management proposal.
  - (G) General terms applicable to the ITB.
- (2) Concession leases ~~opportunities~~ shall be advertised in a minimum of ~~2 two (2)~~ major newspapers or other publications for a minimum of fifteen (15) days in the region where the property or facility ~~shall be leased for a minimum of 15 calendar days~~ is located.
- (3) Interested parties may request a bid package from parties defined in the list provided in the concession ~~lease opportunity~~ advertisement. ~~Request~~ Requests for bid packages shall be made between the hours of 8:00 a.m. and 4:00 p.m. on regular workdays excluding weekends and holidays. Requests for bid packages shall be mailed by the Department within three (3) days of receipt on the day of the request.
- (4) Fully executed bid packages shall be ~~submitted~~ received, either by mail or in person ~~to at the proper location defined stated in the concession opportunity advertisement~~ ITB no later than the date and time of the public bid opening.
- (5) Bid packages shall be opened and reviewed at the time of the bid opening. The name of the ~~prospective bidder~~ and amount of proposed rent shall be publicly announced and documented by at least two Department employees, including one from the purchasing section of the Department the Department's lease coordinator and Agency purchasing agent at the time of the bid opening.
- (6) No award shall be made at the bid opening, ~~and the~~ The Department reserves the right to reject any or all or part of all bids within 30 thirty (30) calendar days from the bid opening. Such notice of rejection, stating the reasons for rejection, shall be provided in writing ~~which shall define the reason for rejection~~ within ten (10) calendar days of the rejection.
- (7) The following ~~are~~ includes reasons for rejection, but the Department is not limited solely to these reasons:
  - (A) The bid ~~package~~ was not submitted in accordance with the deadline set forth in the ~~bid package~~ ITB.

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(B) ~~The requested information requested in the ITB concerning proposed rents, bidders' signature and notary were not completed or fully executed.~~

(C) ~~The bid proposal did not include meet the requirements set forth in (1)(D) (E) and (F) of this section.~~

(D) ~~The bid proposal included inaccurate, false or inauthentic information or inaccurate, false or inauthentic unauthentic documentation.~~

(E) ~~The Department has rescinded withdrawn the ITB, its interest in leasing the property or facility.~~

(F) ~~Unfavorable results of criminal background check.~~

~~(8) Agricultural leases may be are exempt from the requirements set forth in (1) (E) and (F) of this subsection, of certain subsections of this section.~~

### 725:30-22-3. Evaluation of proposals and award of contracts

(a) ~~The rejection of the bid or award of the contract shall occur within 30 thirty (30) days from the date of the bid opening, unless otherwise extended by the Department in its sole discretion.~~

(b) ~~The award of the bid contract shall not be based upon the proposed rents alone and shall include managerial competence, quality of proposed services and improvements, and financial capability to operate and manage the proposed property or facility. The Department reserves the right to verify all documents submitted for evaluation and award purposes. False or unauthentic information or documentation shall be cause for rejection.~~

(c) ~~A recommendation of award shall be made to the executive director Executive Director of the Department based upon a complete evaluation by the state park director, regional manager, park manager and lease coordinator.~~

(d) ~~The executive director and/or the commission Commission shall make the final decision regarding the awarding of a concession lease contract to a prospective bidder.~~

(e) ~~The Department lease coordinator or designee shall coordinate the execution of the awarded contract within 40 twenty (20) working days of award.~~

### 725:30-22-4. General lease agreement requirements

(a) ~~The lease agreement shall be prepared reflecting the terms and conditions of the ITB and the response of the successful bidder.~~

(b) ~~The lessee shall be required to comply with all provision of the lease.~~

(c) ~~Specific attention must be paid to providing complete construction documents for Department review prior to the initiation of any construction. Plans and specifications shall comply with all state codes and shall be sealed by the appropriate architectural and engineering professions as is required by state law for public buildings and facilities.~~

(1) ~~The Department shall approve all construction proposed by a lessee.~~

(2) ~~For state park land owned by the Corps of Engineers or the Bureau of Reclamation, the respective owner must also approve all proposed lessee construction.~~

(3) ~~For state park land owned by the Grand River Dam Authority or another entity, approval of the land owner shall be sought as appropriate and required.~~

(d) ~~The lessee must comply with the Americans with Disability Act and all other laws applicable to development of public facilities. The Department shall coordinate the review of facilities to determine compliance.~~

(e) ~~Any violation of the lease may be grounds for Department action, which may include but is not limited to, termination of the lease agreement. The means for providing notice of violations and an opportunity to remedy the violation shall be prescribed in the lease agreement.~~

(f) ~~Any subsequent purchaser, owner or assignee shall be required to meet all requirements set forth in (1) of 725:30-22-3.~~

(g) ~~Any subsequent purchase, assignment or other conveyance is subject to rejection for the reasons set forth in 725:30-22-7.~~

(h) ~~Any subsequent purchase or assignment or other conveyance must be approved by the Commission.~~

### 725:30-22-5. Lease agreement modifications

(a) ~~The Department shall have the authority at any time to substitute a new lease agreement in exchange for an existing lease with the consent of the existing lessee.~~

(b) ~~The Department shall have the authority to modify any lease agreement, at the request of the lessee, as it deems in the best interest of the Department. Such modifications may include, but are not limited to:~~

(1) ~~Extensions of terms of the lease agreement.~~

(2) ~~Addition of services to the lease agreement.~~

(3) ~~Assignments of the lease agreement.~~

(4) ~~Approval of options in the lease agreement.~~

### 725:30-22-6. Commercial use and permits

(a) ~~Pursuant to state law, the Commission may grant and impose charges for permits and for all commercial uses or purposes to which any of the properties of the Commission or any structures or buildings located on property of the Commission may be used.~~

(b) ~~An application for commercial use shall be submitted to the park manager and shall be reviewed by Department staff pursuant to the general requirements contained in 725:30-16-1.~~

(c) ~~Permits for commercial use of Department properties shall be allowed on a short-term basis. A permit for commercial use may be issued for a period of thirty (30) days with no more than four (4) consecutive use permits being issued in succession for the same commercial use.~~

(d) ~~Charges for permits for commercial use shall be based on the average commission paid by existing concession leases within state parks, that provide similar commercial uses. If no comparable concession leases exist within state parks then comparable charges for similar commercial uses within the region and the state will be sought to establish the charges for the permit.~~

(e) The terms contained in the permit document shall guide the operation and oversight of this short-term commercial use.

**725:30-22-7. Capital improvements**

(a) At the discretion of the Commission, the Department may accept repairs or improvements made to Department assets by concession lessees in lieu of rents/commissions paid to the Department.

(1) All repairs or improvements must be made on or to property or facilities owned or leased from a third party by the State and cannot be made to assets that are subject to depreciation or serve to secure a mortgage or other security interest of the concession lessee. All repairs or improvements made under this section immediately become the property of the Department and must be documented as to actual cost of the improvement. All documentation submitted must be acceptable to the Department and all repairs or improvements shall comply with the requirements of 725:30-22-5(c) and (d) and the concession lease. All or a portion of the cost of the repairs or improvements may be used to reduce the payment of any lease or rental agreement.

(2) All such repairs or improvements must be made at, or adjacent to, the concession site and must be beneficial to the Department and the concession lessee.

(b) All repairs or capital improvements made by the lessee in lieu of rents/commissions paid to the Department must be documented by addendum or amendment to the concession lease agreement and approved by the Commission.

[OAR Docket #03-732; filed 4-21-03]

**TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT  
CHAPTER 35. THE OKLAHOMA FILM OFFICE**

[OAR Docket #03-733]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Oklahoma Film Enhancement Rebate Program  
725:35-1-3 [AMENDED]

**AUTHORITY:**

Oklahoma Tourism and Recreation Commission; Section 1847.1 of Title 74 of the Oklahoma Statutes.

**DATES:**

**Comment period:**

January 15, 2003 through February 18, 2003

**Public hearing:**

February 18, 2003

**Adoption:**

February 20, 2003

**Submitted to the Governor:**

February 24, 2003

**Submitted to the House:**

February 24, 2003

**Submitted to the Senate:**

February 24, 2003

**Gubernatorial approval:**

April 1, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2003

**Final adoption:**

April 17, 2003

**Effective:**

May 27, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

NA

**INCORPORATIONS BY REFERENCE:**

NA

**ANALYSIS:**

The permanent rule seeks to conform the current rules related to the Oklahoma Film Enhancement Rebate Program to statutory changes made during the 2002 Legislative Session, SB1434. These statutory changes increase the competitive nature of the program, and ensure that eligible program funding recipients maintained evidence of a viable distribution agreement for their film. The program, subject to the availability of funds, provides qualified production companies a cash back rebate in the amount of fifteen percent (15%) of documented expenditures made in Oklahoma directly attributable to film or television production. The program is designed to increase film production in the state, which will provide jobs for Oklahomans and dollars for Oklahoma businesses. This program is designed to provide an economic benefit to the state as more films are produced in Oklahoma.

**CONTACT PERSON:**

Dino Lalli, Director, Office of the Oklahoma Film and Music Commission, OTRD, 100 N. Robinson, Suite 100, Oklahoma City, OK 73102, 405-522-0651

**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 MAY 27, 2003:**

**SUBCHAPTER 1. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM**

**725:35-1-3. Program requirements and qualification**

(a) In order to be eligible, production companies must contact the Director and agree in writing to the following:

- (1) To file an Oklahoma income tax return for the year that activity and expenditures occurred.
- (2) To provide the following screen credit, "Filmed in Oklahoma under the Auspices of the Oklahoma Film Enhancement Rebate Program".
- (3) To provide the following prior to the beginning of principal photography:
  - (A) Application of eligibility for rebate programs.
  - (B) Name of completion bond company, a copy of the bond, and a copy of the contract between the production company and the principal actors.
  - (C) Copy of the script and the inclusion of the OFO on the project's revisions distribution list.
  - (D) Copy of the production board or equivalent documentation.

(4) To provide evidence of a distribution agreement within one hundred eighty (180) days of completion of principal photography.

(b) After a production company meets all requirements, the Director will issue a formal letter of acknowledgement of qualification.

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- (c) Production companies cannot use this Program in addition to other Oklahoma rebate programs.
- (d) Production companies shall provide an affidavit as required by ~~68 O.S. Section 3624-C~~ law.

[OAR Docket #03-733; filed 4-21-03]

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

[OAR Docket #03-687]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

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

785:45-1-4. Testing procedures [AMENDED]

Subchapter 5. Surface Water Quality Standards

Part 1. General Provisions

785:45-5-3. Beneficial uses; default designations [AMENDED]

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

Part 3. Beneficial Uses and Criteria to Protect Uses

785:45-5-12. Fish and wildlife propagation [AMENDED]

785:45-5-19. Aesthetics [AMENDED]

Part 5. Special Provisions

785:45-5-25. Implementation Policies for the Antidegradation Policy Statement [AMENDED]

Appendix A. Designated Beneficial Uses for Surface Waters [REVOKED]

Appendix A. Designated Beneficial Uses for Surface Waters [NEW]

Appendix E. Requirements for Development of Site Specific Criteria for Metals [REVOKED]

Appendix E. Requirements for Development of Site Specific Criteria for Metals [NEW]

### AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. 2001, § 1085.30; 27A O.S. 2001, § 1-3-101; and 82 O.S. 2001, § 1085.2.

### DATES:

#### Comment period:

November 15, 2002 through January 3, 2003

#### Public hearing:

January 3, 2003

#### Adoption:

February 11, 2003

#### Submitted to Governor:

February 19, 2003

#### Submitted to House:

February 19, 2003

#### Submitted to Senate:

February 19, 2003

#### Gubernatorial approval:

March 24, 2003

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2003

#### Final adoption:

April 15, 2003

#### Effective:

July 1, 2003

#### INCORPORATION BY REFERENCE:

n/a

#### ANALYSIS:

The Oklahoma Water Resources Board ("OWRB") has adopted amendments to various provisions of the Oklahoma Water Quality Standards ("OWQS") as follows:

Several amendments in OAC 785:45-1-2 have been adopted in order to correct grammar and formatting. The intended effect of these amendments

is to make the rules reflect the appropriate definitions, grammar, format, and otherwise to state their text accurately.

OAC 785:45-1-4 has been amended to add language providing for approval by the U.S. Environmental Protection Agency ("EPA") Regional Administrator of certain kinds of testing procedures. This section requires methods of sample collection, preservation and analysis to be in accordance with EPA regulation and certain publications, or some other procedure approved by the Department of Environmental Quality ("DEQ") Lab Certification Program. The circumstance which created the need for the amendment is that the current language, promulgated in 2001, left open the possibility that DEQ could approve a test procedure in a waste discharge permit that was contrary to 40 C.F.R. 136.3. After the 2001 amendment was submitted to the EPA for approval as a federal standard pursuant to the federal Clean Water Act, EPA disapproved this amendment and specified that language must be added to ensure the concurrence of the EPA Regional Administrator in any *ad hoc* testing procedure approved by DEQ. The intended effect of this adopted amendment is to cure the potential problem cited by EPA and obtain EPA's approval of this section as amended; the proposed amendment is expected to be approved by EPA.

OAC 785:45-5-19 and 785:45-5-25 have been amended to provide for implementation of the criterion for total phosphorus in "Scenic Rivers" and to clarify the applicability of this criterion. The circumstances which created the need for these amendments are that the amendments of these sections promulgated in 2002 (hereinafter referred to as the "Phosphorus Amendments") provided that "such criterion shall be fully implemented within ten (10) years as provided in a *separate rule promulgated by the Board*" (emphasis added). After the Phosphorus Amendments were approved by the Board, various interested persons expressed differing interpretations of the effective date and implementation of the Phosphorus Amendments. These differences of interpretation prompted the OWRB to promulgate a new OAC 785:45-5-28 on an emergency basis in 2002 to prescribe how the criterion is to be implemented. The intended effect of the adopted amendments is to incorporate the substance of emergency rule 785:45-5-28 into OAC 785:45-5-19 and 785:45-5-25 so as to allow an extended period for implementing the phosphorus criterion for Scenic Rivers, to clarify the applicability of the criterion, and to supersede emergency rule OAC 785:45-5-28.

Appendix A, Designated Beneficial Uses for Surface Waters, has been revoked and reenacted with changes designating "nutrient-limited watersheds" for Fort Gibson Reservoir and Taylor Lake. The circumstances which created the need for these amendments are that monitoring of these lakes from 1998 through 2001 established that they both have beneficial uses which are adversely affected by excess nutrients as determined by Carlson's Trophic State Index. The monitoring results put these lakes and their watersheds within the definition of a "nutrient-limited watershed" prescribed by OAC 785:45-1-2. The intended effect of these amendments is to prioritize remedial activity in these watersheds and initiate action in the appropriate state environmental agency.

Appendix E, Requirements for Development of Site Specific Criteria for Metals, has been revoked and reenacted to add new site specific criteria for copper and zinc relating to the City of Poteau treated wastewater discharge to the Poteau River. The circumstances which created the need for these amendments are that this discharger has completed a study which indicates that criteria more appropriate and site specific than otherwise provided in OAC 785:45 can and should be applied in its respective circumstances. The intended effect of these amendments is to provide for increased specificity in the criteria and standards which apply to this receiving stream, while maintaining water quality, as permitted by EPA and federal law.

The rules amendments adopted by the OWRB in this rulemaking interpret and implement portions of 82 O.S. 2001, §§ 1084.2, 1085.2 and 1085.30, and 27A O.S. 2001, § 1-3-101. Rules related to these rules amendments are codified in OAC Title 785, Chapter 46.

#### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:**

SUBCHAPTER 1. GENERAL PROVISIONS

785:45-1-2. Definitions

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

"**Abatement**" means reduction of the degree or intensity of pollution.

"**Acute test failure**" means greater than or equal to 50% lethality to appropriate test organisms in 100% effluent in 48 hours.

"**Acute toxicity**" means greater than or equal to 50% lethality to appropriate test organisms in a test sample.

"**Alpha particle**" means a positively charged particle emitted by certain radioactive materials. It is the least penetrating of the three common types of radiation (alpha, beta and gamma) and usually is not dangerous to plants, animals or humans.

"**Ambient**" means surrounding, especially of or pertaining to the environment about an entity, but undisturbed and unaffected by it.

"**Aquifer**" means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water; unconsolidated sands and gravels are typical examples.

"**Assimilative capacity**" means the amount of pollution a waterbody can receive and still maintain the water quality standards designated for that waterbody.

"**Attainable uses**" means the best uses achievable for a particular waterbody given water of adequate quality. The process of use attainability analysis can, and in certain cases must, be used to determine attainable uses for a waterbody.

"**BCF**" means bioconcentration factor.

"**Beneficial uses**" means a classification of the waters of the State, according to their best uses in the interest of the public.

"**Benthic macroinvertebrates**" means invertebrate animals that are large enough to be seen by the unaided eye, can be retained by a U. S. Standard No. 30 sieve, and live at least part of their life cycles within or upon available substrate in a body of water or water transport system.

"**Best Available Technology**" means the best proven technology, treatment techniques or other economically viable means which are commercially available.

"**Best Management Practices**" (**BMPs**) "**Best management practices**" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state or United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"**Beta particle**" means a negatively charged elementary particle emitted by radioactive decay that may cause skin burns. It is easily stopped by a thin sheet of metal.

"**Bioconcentration factor (BCF)**" means the relative measure of the ability of a contaminant to be stored in tissues

and thus to accumulate through the food chain and is shown as the following formula:  $BCF = \text{Tissue Concentration} \text{ divided by } \text{Water Concentration}$ .

"**BMPs**" means best management practices.

"**BOD**" means biochemical oxygen demand.

"**Carcinogenic**" means cancer producing.

"**Chronic test failure**" is the statistically significant difference (at the 95% confidence level) between survival of the appropriate test organism in the chronic low flow dilution (LFD) after 7 or 21 days and a control. Statistical analyses shall be consistent with methods described in EPA's publication no. 600/14-89/001, "Short-Term Methods For Estimating The Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", or most recent revision.

"**Chronic toxicity**" means a statistically significant difference (at the 95% confidence level) between longer-term survival and/or reproduction or growth of the appropriate test organisms in a test sample and a control. Teratogenicity and mutagenicity are considered to be effects of chronic toxicity.

"**Coliform group organisms**" means all of the aerobic and facultative anaerobic gram-negative, non-spore-forming rod shaped bacteria that ferment lactose broth with gas formation within 48 hours at 35°C.

"**Color**" means true color as well as apparent color. True color is the color of the water from which turbidity has been removed. Apparent color includes not only the color due to substances in solution (true color), but also that color due to suspended matter.

"**Conservative element**" means a substance which persists in the environment, having characteristics which are resistant to ordinary biological or chemical degradation or volatilization.

"**Conservation plan**" means, but is not limited to, a written plan which lists activities, management practices and maintenance or operating procedures designed to promote natural resource conservation and is intended for the prevention and reduction of pollution of waters of the state.

"**Critical temperature**" means the higher of the seven-day maximum temperature likely to occur with a 50% probability each year, or 29.4°C (85°F).

"**Criterion**" means a number or narrative statement assigned to protect a designated beneficial use.

"**Degradation**" means any condition caused by the activities of humans which result in the prolonged impairment of any constituent of the aquatic environment.

"**Designated beneficial uses**" means those uses specified for each waterbody or segment whether or not they are being attained.

"**Dissolved oxygen (DO)**" means the amount of oxygen dissolved in water at any given time, depending upon the water temperature, the partial pressure of oxygen in the atmosphere in contact with the water, the concentration of dissolved organic substances in the water, and the physical aeration of the water.

"**DO**" means dissolved oxygen.

"**DRASTIC**" means that standardized system developed by the United States Environmental Protection Agency for evaluating groundwater vulnerability to pollution, based upon

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consideration of depth to water (D), net recharge (R), aquifer media (A), soil media (S), topography (T), impact of the vadose zone media (I), and hydraulic conductivity (C) of the aquifer.

"**EPA**" means the United States Environmental Protection Agency.

"**Ephemeral stream**" means an entire stream which flows only during or immediately after a rainfall event, and contains no refuge pools capable of sustaining a viable community of aquatic organisms.

"**Epilimnion**" means the uppermost homothermal region of a stratified lake.

"**Eutrophication**" means the process whereby the condition of a waterbody changes from one of low biologic productivity and clear water to one of high productivity and water made turbid by the accelerated growth of algae.

"**Existing beneficial uses**" means those uses listed in Title 40 CFR §131.3 actually attained by a waterbody on or after November 28, 1975. These uses may include public water supplies, fish and wildlife propagation, recreational uses, agriculture, industrial water supplies, navigation, and aesthetics.

"**Existing Point Source Discharge(s)**" "**Existing point source discharge(s)**" means, for purposes of 785:45-5-25, point source discharges other than stormwater which were/are in existence when the ORW, HQW or SWS designation was/is assigned to the water(s) which receive(s) the discharge. The load from a point source discharge which is subject to the no increase limitation shall be based on the permitted mass loadings and concentrations, as appropriate, in the discharge permit effective when the limitation was assigned. Publicly owned treatment works may use design flow, mass loadings or concentration as appropriate if those flows, loadings or concentrations were approved as a portion of Oklahoma's Water Quality Management Plan prior to the application of the ORW, HQW, or SWS limitation.

"**Fecal coliform**" means a group of organisms common to the intestinal tracts of humans and of animals. The presence of fecal coliform bacteria in water is an indicator of pollution and of potentially dangerous bacterial contamination.

"**Fresh groundwater**" means groundwater with naturally-occurring concentrations of total dissolved solids less than 10,000 mg/L, or with levels of total dissolved solids of 10,000 or more mg/L caused by human activities.

"**Geometric mean**" means the nth root of the product of the samples.

"**Groundwater**" means waters of the state under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream. [82: 1020.1(A)]

"**Groundwater basin**" means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities". [82: 1020.1(C)]

"**HLAC**" means Habitat Limited Aquatic Community, described in OAC 785:45-5-12(b).

"**HQW**" means High Quality Water.

"**Intolerant climax fish community**" means habitat and water quality adequate to support game fishes or other sensitive species introduced or native to the biotic province or ecological

region, which require specific or narrow ranges of high quality environmental conditions.

"**Lake**" means:

(A) An impoundment of waters of the state over 50 acre-feet in volume which is either:

(i) owned or operated by federal, state, county, or local government or

(ii) appears in Oklahoma's Clean Lakes Inventory.

(B) Surface impoundments which are used as a treatment works for the purpose of treating stabilizing or holding wastes are excluded from this definition.

"**LC<sub>50</sub>**" means lethal concentration and is the concentration of a toxicant in an external medium that is lethal to fifty percent of the test animals for a specified period of exposure.

"~~Long-Term Average Flow~~" "**Long-term average flow**" means an arithmetic average stream flow over a representative period of record.

"**MDL**" means the Method Detection Limit and is defined as the minimum concentration of an analyte that can be measured and reported with 99% confidence that the analyte concentration is greater than zero (0). MDL is dependent upon the analyte of concern.

"**Mixing zone**" means when a liquid of a different quality than the receiving water is discharged into the receiving water, a mixing zone is formed. Concentration of the liquid within the mixing zone decreases until it is completely mixed with receiving water. A regulatory mixing zone is described in 785:45-5-26.

"~~Narrative Criteria~~ **criteria**" means statements or other qualitative expressions of chemical, physical or biological parameters that are assigned to protect a beneficial use.

"**Natural source**" means source of contamination which is not human induced.

"**NLW Impairment Study**" means a scientific process of surveying the chemical, physical and biological characteristics of a nutrient threatened reservoir to determine whether the reservoir's beneficial uses are being impaired by human-induced eutrophication.

"**Non-conservative element**" means a substance which undergoes significant short-term degradation or change in the environment other than by dilution.

"**Nonpoint source**" means a source of pollution without a well defined point of origin.

"**Normal stream flow conditions**" means flow corresponding to low gradient areas in the hydrograph.

"**NTU**" means Nephelometric Turbidity Unit, which is the unit of measure using the method based upon a comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension (formazin). The higher the intensity of scattered light, the higher the turbidity.

"**Numerical criteria**" means concentrations or other quantitative measures of chemical, physical or biological parameters that are assigned to protect a beneficial use.

"**Numerical standard**" means the most stringent of the numerical criteria assigned to the beneficial uses for a given stream.

**"Nutrient impaired reservoir"** means a reservoir with a beneficial use or uses determined by an NLW Impairment Study to be impaired by human-induced eutrophication.

**"Nutrient-limited watershed"** means a watershed of a waterbody with a designated beneficial use which is adversely affected by excess nutrients as determined by Carlson's Trophic State Index (using chlorophyll-a) of 62 or greater, or is otherwise listed as "NLW" in Appendix A of this Chapter.

**"Nutrients"** means elements or compounds essential as raw materials for an organism's growth and development; these include carbon, oxygen, nitrogen and phosphorus.

**"ORW"** means Outstanding Resource Water.

**"PCBs"** means polychlorinated biphenyls.

**"Picocurie (pCi)"** means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

**"Point source"** means any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock or concentrated animal feeding operation from which pollutants are or may be discharged. This term does not include return flows from irrigation agriculture.

**"Pollutant"** means any material, substance or property which may cause pollution.

**"Pollution"** means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the State, or such discharge of any liquid, gaseous or solid substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful, or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life". [82: §1084.2(1)]

**"Polychlorinated biphenyls (PCBs)"** means a group of organic compounds (206 possible) which are constructed of two phenyl rings and more than one chlorine atom.

**"PQL"** means Practical Quantitation Limit and is defined as 5 times the MDL. The PQL represents a practical and routinely achievable detection limit with high confidence.

**"Put and take fishery"** means the introduction of a fish species into a body of water for the express purpose of sport fish harvest where existing conditions preclude a naturally reproducing population.

**"Salinity"** means the concentration of salt in water.

**"Sample standard"** means the arithmetic mean of historical data from October 1976 to September 1983 except as otherwise provided in Appendix F of this Chapter, plus two standard deviations of the mean.

**"Seasonal base flow"** means the sustained or fair-weather runoff, which includes but is not limited to groundwater runoff and delayed subsurface runoff.

**"Seasonal seven-day, two-year low flow"** means the design flow for determining allowable BOD load to a stream.

**"Seasonal 7Q2"** means the seasonal seven-day, two-year low flow.

**"Sensitive representative species"** means *Ceriodaphnia dubia*, *Daphnia magna*, *Daphnia pulex*, *Pimphales promelas* (Fathead minnow), *Lepomis macrochirus* (Bluegill sunfish), or other sensitive organisms indigenous to a particular waterbody.

**"Seven-day, two-year low flow"** means the design flow for determining allowable discharge load to a stream.

**"7Q2"** means the seven-day, two-year low flow.

**"Standard deviation"** means a statistical measure of the dispersion around the arithmetic mean of the data.

**"Standard Methods"** means the publication "Standard Methods for the Examination of Water and Wastewater", published jointly by the American Public Health Association, American Water Works Association, and Water Environment Federation.

**"Standards"**, when capitalized, means this Chapter, which constitutes the Oklahoma Water Quality Standards described in 82 O.S. §1085.30. Whenever this term is not capitalized or is singular, it means the most stringent of the criteria assigned to protect the beneficial uses designated for a specified water of the State.

**"Storm water"** means storm water runoff, snow melt runoff, and surface runoff and drainage.

**"Subwatershed"** means a smaller component of the larger watershed.

**"Synergistic effect"** means the presence of cooperative pollutant action such that the total effect is greater than the sum of the effects of each pollutant taken individually.

**"Thermal pollution"** means degradation of water quality by the introduction of heated effluent and is primarily a result of the discharge of the cooling waters from industrial processes, particularly from electrical power generation.

**"Thermal stratification"** means horizontal layers of different densities produced in a lake caused by temperature.

**"Variance"** means a temporary (not to exceed three years) exclusion of a specific numerical criterion for a specific discharge to a specific waterbody.

**"Warm Water Aquatic Community"** means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support intolerant climax fish communities and includes an environment suitable for the full range of warm water benthos.

**"Wastes"** means industrial waste and all other liquid, gaseous or solid substances which may pollute or tend to pollute any waters of the state". [82 O. S. §1084.2(2)]

**"Waterbody"** means any specified segment or body of waters of the state, including but not limited to an entire stream or lake or a portion thereof.

**"Water quality"** means physical, chemical, and biological characteristics of water which determine diversity, stability, and productivity of the climax biotic community or affect human health.

**"Waters of the state"** means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof [82:1084.2(3)].

**"Watershed"** means the drainage area of a waterbody including all direct or indirect tributaries.

**"WWAC"** means Warm Water Aquatic Community.

**"Yearly mean standard"** means the arithmetic mean of historical data from October 1976 to September 1983 except

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as otherwise provided in Appendix F of this Chapter, plus one standard deviation of the mean. The moving yearly mean standard is an average of the last five years of available data.

**"Zone of passage"** means a three dimensional zone expressed as a volume in the receiving stream through which mobile aquatic organisms may traverse the stream past a discharge without being affected by it. A regulatory zone of passage is described in 785:45-5-26.

### 785:45-1-4. Testing procedures

All methods of sample collection, preservation, and analysis used in applying any of the standards shall be in accordance with "The Guidelines Establishing Test Procedures for the Analysis of Pollutants" as provided by 40 Code of Federal Regulations, Part 136 (40 CFR Part 136); "Methods of Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms", "Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", "Test Methods for Escherichia coli and Enterococci in Water by the Membrane Filter Procedure", or other procedures approved by the Department of Environmental Quality's Laboratory Certification Program and the EPA Region 6 Regional Administrator.

## SUBCHAPTER 5. SURFACE WATER QUALITY STANDARDS

### PART 1. GENERAL PROVISIONS

#### 785:45-5-3. Beneficial uses: default designations

(a) ~~Surface Waters Excluding Lakes~~ waters excluding lakes.

(1) For those surface waters of the state not listed in Appendix A of this Chapter, excluding lakes, the following beneficial uses are designated:

- (A) Agriculture: livestock and irrigation (see 785:45-5-13),
- (B) Industrial and Municipal Process and Cooling Water (see 785:45-5-15),
- (C) Aesthetics (see 785:45-5-19),
- (D) The Warm Water Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation (see 785:45-5-12(c)), and
- (E) Primary Body Contact Recreation (see 785:45-5-16).

(2) The beneficial uses described in 785:45-5-10 (Public and Private Water Supplies), 785:45-5-11 (Emergency Public and Private Water Supplies), 785:45-5-12(b) (the Habitat Limited Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation), and 785:45-5-17 (Secondary Body Contact Recreation) shall be designated only following use attainability analyses.

(3) Beneficial use determinations that follow use attainability analyses are subject to administrative rule-making proceedings including the public hearing process.

(b) **Lakes.**

(1) For lakes, including those listed in Appendix A of this Chapter, the following beneficial uses are designated:

- (A) The Warm Water Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation (see 785:45-5-12(c));
- (B) Agriculture (see 785:45-5-13);
- (C) Industrial and Municipal Process and Cooling Water (see 785:45-5-15);
- (D) Primary Body Contact Recreation (see 785:45-5-16); and
- (E) Aesthetics (see 785:45-5-19).

(2) The beneficial use of Public and Private Water Supplies (see 785:45-5-10) is specifically designated for certain lakes as provided in Appendix A of this Chapter. For all other lakes, the beneficial uses designated in this paragraph take control over the uses designated for stream segments which include descriptions of lakes or portions thereof identified in Appendix A of this Chapter.

#### 785:45-5-4. Applicability of narrative and numerical criteria

(a) For purposes of permitting discharges for attainment of numerical criteria or establishing site specific criteria, streamflows of the greater of 1.0 cfs or 7Q2 shall be used to determine appropriate permit conditions unless otherwise provided in OAC 785:45 or 785:46.

(b) When numerical criteria do not apply, instream conditions including dissolved oxygen concentrations, organoleptic compounds, nutrients, and oil and grease shall be maintained to prevent nuisance conditions caused by man's activities.

(c) Narrative criteria listed in ~~785:45-5-12(f)(4) and 785:45-5-19(e)(2)-(4)~~ this Chapter shall be maintained at all times and apply to all surface waters of the State.

(d) If more than one narrative or numerical criteria is assigned to a stream, the most stringent shall be maintained.

(e) A temporary variance may be granted at the sole discretion of the Oklahoma Water Resources Board in limited circumstances only for specific numerical criteria listed in Table 2 of Appendix G of this Chapter addressing water column numerical criteria to protect human health for the consumption of fish flesh and water, for specific numerical criteria listed in Appendix G Table 2 addressing numerical criteria for toxic substances, and for specific numerical criteria listed in Appendix G Table 2 addressing water column numerical criteria to protect human health for the consumption of fish flesh only.

(1) **General requirements and time limits for variance.** A variance or exception to listed numeric criteria may only be granted by the Board so long as the applicant complies with all procedural and application requirements, demonstrates to the satisfaction of the Board that the necessary conditions specified in 785:45-5-4(e)(4) exist, and that the variance will not otherwise be contrary to law or inconsistent with the Board's statutory duties. Variances shall be allowed only in very limited situations.

In no circumstances shall a variance be granted which exceeds three (3) years in duration and no renewal shall be allowed.

(2) **Applications and related requirements.** A variance may only be considered and granted upon application of a person for discharge from a specific facility to a specific stream segment(s). All applications for a variance must contain or include as attachments at the time of filing, at a minimum, all written documentation which supports a finding that the necessary conditions listed in 785:45-5-4(e)(4) exist, a description of the specific numerical criterion for which the variance is requested, the legal description of the stream segment(s) which would receive the discharge and the location of any other affected waters, and such other information as the Board may specify as necessary for adequate review of the application. A fee, as set forth in Chapter 5 of this Title, shall be submitted with the application for variance.

(3) **Procedure and scope of variance.**

(A) A variance may be granted only by the Oklahoma Water Resources Board, shall be restricted to those listed numerical criteria for which an application is filed, and shall apply only to the specific facility and specific stream segment(s) which receives the discharge.

(B) The applicant for a variance must prepare a public notice whose contents shall reflect the nature of the variance applied for and such other information as the Board may deem appropriate, and shall state the date, time and location of public hearing on the application. Such notice, after submission to and approval by the Board, shall be published at the expense of the applicant once a week for two consecutive weeks, minimum seven day interval, in a newspaper(s) having general circulation in the county(ies) in which the discharge is located. The Board may require additional publication of the notice in additional counties or publications at the applicant's expense. Proof of publication shall be provided as directed by the Board.

(C) The applicant shall deliver or mail such public notice to all persons who are on a standing list for receiving notice of such applications for variances. Such standing list shall be established and maintained by the Board and shall include the Office of the Attorney General, the chief executive of each affected municipality and county, all persons who shall request to receive such notices, and such other persons as may be specified by the Board.

(D) An administrative hearing shall be held not earlier than twenty-one days following the last publication or mailing of notice. At the hearing, the burden of proof shall be upon the applicant to produce evidence which demonstrates to the satisfaction of the Board that all conditions and requirements of these rules and applicable law are met. All interested persons may present oral or written comments prior to or

at the hearing on the application, as specified in the notice.

(4) **Conditions for variance.**

(A) A variance shall be effective only after approval by the U. S. Environmental Protection Agency.

(B) A variance may be granted by the Board only if the following additional conditions are met:

(i) The granting of a variance will not result in the violation of any other OWQS, including those specified for ORW, HQW or other classes of waters; and

(ii) New or previously unavailable information regarding toxicity, bioavailability, persistence or degradation of a specific pollutant refutes the scientific basis for the effective numerical criterion; or

(iii) Non-attainment of a numerical criterion is documented in the stream segment which is the subject of the variance application or in close proximity upstream of such segment, and there is no increase in the concentration of the pollutant which is the subject of the variance outside the mixing zone or at some point downstream of the facility following complete mixing if appropriate relative to the concentration upstream of the facility, and

(I) non-attainment is demonstrated to be the result of natural source concentrations of that pollutant in the water column, sediment or aquatic life, or

(II) non-attainment is the result of human caused conditions which cannot be remedied or would cause more environmental damage if corrected than if left in place.

(f) Schedules for compliance with the Oklahoma Water Quality Standards may be granted to persons or facilities discharging wastes into waters of the state unless such discharge creates an actual or potential hazard to the public health in accordance with 82 O.S. §1085.30(D).

### PART 3. BENEFICIAL USES AND CRITERIA TO PROTECT USES

#### 785:45-5-12. Fish and wildlife propagation

(a) **List of subcategories.** The narrative and numerical criteria in this section are designed to maintain and protect the beneficial use classification of "Fish and Wildlife Propagation". This classification encompasses several subcategories which are capable of sustaining different climax communities of fish and shellfish. These subcategories are Habitat Limited Aquatic Community, Warm Water Aquatic Community, Cool Water Aquatic Community (Excluding Lake Waters), and Trout Fishery (Put and Take).

(b) **Habitat Limited Aquatic Community subcategory.**

(1) Habitat limited aquatic community means a subcategory of the beneficial use "Fish and Wildlife Propagation" where the water chemistry and habitat are not

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adequate to support a "Warm Water Aquatic Community" because:

- (A) Naturally occurring water chemistry prevents the attainment of the use; or
- (B) Naturally occurring ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of a sufficient volume of effluent to enable uses to be met; or
- (C) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or
- (D) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the use; or
- (E) Physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of the "Warm Water Aquatic Community" beneficial use.

(2) Habitat Limited Aquatic Community may also be designated where controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act as amended, which would be necessary to meet standards or criteria associated with the beneficial use subcategories of Cool Water Aquatic Community or Warm Water Aquatic Community, would result in substantial and widespread economic and social impact.

(c) **Warm Water Aquatic Community subcategory.** Warm Water Aquatic Community means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support climax fish communities.

(d) **Cool Water Aquatic Community subcategory.** Cool Water Aquatic Community means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality, water temperature and habitat are adequate to support cool water climax fish communities and includes an environment suitable for the full range of cool water benthos. Typical species may include smallmouth bass, certain darters and stoneflies.

(e) **Trout Fishery subcategory.** Trout Fishery (Put and Take) means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality, water temperature and habitat are adequate to support a seasonal put and take trout fishery. Typical species may include trout.

(f) **Criteria used in protection of fish and wildlife propagation.** The narrative and numerical criteria to maintain and protect the use of "Fish and Wildlife Propagation" and its subcategories shall include:

(1) **Dissolved oxygen.**

(A) Dissolved oxygen (DO) criteria are designed to protect the diverse aquatic communities of Oklahoma.

(B) Allowable loadings designed to attain these dissolved oxygen criteria are provided as follows:

(i) For streams with sufficient historical data, the allowable load shall be based on meeting the dissolved oxygen concentration standard at the seven-day, two-year low flow and the appropriate seasonal temperatures.

(ii) For streams lacking sufficient historical data, or when the appropriate flow is less than one (1) cubic foot per second (cfs), the allowable load shall be based on meeting the dissolved oxygen concentration standard at one (1) cfs and the appropriate seasonal temperature.

(iii) Provided, for streams designated in OAC 785:45 Appendix A as HLAC or WWAC which have sufficient historical data as determined by the permitting authority, the allowable BOD load may be based upon meeting the dissolved oxygen concentration standard at the applicable seasonal temperature and corresponding seasonal seven-day, two-year low flow.

(C) Except for naturally occurring conditions, the dissolved oxygen criteria are as set forth in Table 1 of Appendix G of this Chapter.

(2) **Temperature.**

(A) At no time shall heat be added to any surface water in excess of the amount that will raise the temperature of the receiving water more than 2.8°C outside the mixing zone.

(B) The normal daily and seasonal variations that were present before the addition of heat from other than natural sources shall be maintained.

(C) In streams, temperature determinations shall be made by averaging representative temperature measurements of the cross sectional area of the stream at the end of the mixing zone.

(D) In lakes, the temperature of the water column and/or epilimnion, if thermal stratification exists, shall not be raised more than 1.7°C above that which existed before the addition of heat of artificial origin, based upon the average of temperatures taken from the surface to the bottom of the lake, or surface to the bottom of the epilimnion if the lake is stratified.

(E) No heat of artificial origin shall be added that causes the receiving stream water temperature to exceed the maximums specified below:

(i) The critical temperature plus 2.8°C in warm water and habitat limited aquatic community streams and lakes except in the segment of the Arkansas River from Red Rock Creek to the headwaters of Keystone Reservoir where the maximum temperature shall not exceed 34.4°C.

(ii) 28.9°C in streams designated cool water aquatic community.

(iii) 20°C in streams designated trout fishery (put and take).

(F) Water in privately-owned reservoirs used in the process of cooling water for industrial purposes is

exempt from these temperature restrictions, provided the water released from any such lake or reservoir into a stream system shall meet the water quality standards of the receiving stream.

(3) **pH (hydrogen ion activity).** The pH values shall be between 6.5 and 9.0 in waters designated for fish and wildlife propagation; unless pH values outside that range are due to natural conditions.

(4) **Oil and grease (petroleum and non-petroleum related).**

(A) All waters having the designated beneficial use of any subcategory of fish and wildlife propagation shall be maintained free of oil and grease to prevent a visible sheen of oil or globules of oil or grease on or in the water.

(B) Oil and grease shall not be present in quantities that adhere to stream banks and coat bottoms of water courses or which cause deleterious effects to the biota.

(5) **Biological Criteria.**

(A) Aquatic life in all waterbodies ~~designated with the beneficial use designation of Fish and Wildlife Propagation~~ (excluding waters designated "Trout, put-and-take") shall not exhibit degraded conditions as indicated by one or both of the following:

- (i) comparative regional reference data from a station of reasonably similar watershed size or flow, habitat type and Fish and Wildlife beneficial use subcategory designation or
- (ii) by comparison with historical data from the waterbody being evaluated.

(B) Compliance with the ~~requirements of 785:45-5-12(f)(5)~~ biological criteria to protect Fish and Wildlife Propagation set forth in this paragraph shall be based upon measures including, but not limited to, diversity, similarity, community structure, species tolerance, trophic structure, dominant species, indices of biotic integrity (IBI's), indices of well being (IWB's), or other measures.

(6) **Toxic substances (for protection of fish and wildlife).**

(A) Surface waters of the state shall not exhibit acute toxicity and shall not exhibit chronic toxicity outside the chronic regulatory mixing zone. Acute test failure and chronic test failure shall be used to determine discharger compliance with these narrative aquatic life toxics criteria. The narrative criterion specified in this subparagraph (A) which prohibits acute toxicity shall be maintained at all times and shall apply to all surface waters of the state. The narrative criterion specified in this subparagraph (A) which prohibits chronic toxicity shall apply at all times outside the chronic regulatory mixing zone and within the zone of passage to all waters of the state except:

(i) When a discharge into surface waters designated with the Fish and Wildlife Propagation beneficial use complies with and meets the discharge permit limitations but the flow immediately

upstream from the discharge is less than one (1) cubic foot per second or when the flow falls below the seven-day, two-year low-flow, whichever is larger. For purposes of the permitting process, the regulatory low flow shall be the larger of one (1) cubic foot per second or the seven-day, two-year low flow; and

(ii) To streams listed as ephemeral in Appendix A.

(B) Procedures to implement these narrative criteria are found in Oklahoma's Continuing Planning Process document.

(C) Toxicants for which there are specific numerical criteria are listed in Table 2 of Appendix G of this Chapter.

(D) For toxicants not specified in Table 2 of Appendix G of this Chapter, concentrations of toxic substances with bio-concentration factors of 5 or less shall not exceed 0.1 of published LC<sub>50</sub> value(s) for sensitive representative species using standard testing methods, giving consideration to site specific water quality characteristics.

(E) Concentrations of toxic substances with bio-concentration factors greater than 5 shall not exceed 0.01 of published LC<sub>50</sub> value(s) for sensitive representative species using standard testing methods, giving consideration to site specific water quality characteristics.

(F) Permit limits to prevent toxicity caused by discharge of chlorine and ammonia are determined pursuant to the narrative criteria contained within (A) and (B) of this paragraph.

(G) The acute and chronic numerical criteria listed in the "Fish and Wildlife Propagation" column in Table 2 of Appendix G of this Chapter apply to all waters of the state designed with any of the beneficial use sub-categories of Fish and Wildlife Propagation. The numerical criteria which prohibit acute toxicity apply outside the acute regulatory mixing zone.

(i) The numerical criteria specified in Table 2 of Appendix G which prohibit chronic toxicity shall apply at all times outside the chronic regulatory mixing zone and within the zone of passage to all waters of the state except:

- (I) When a discharge into surface waters designated with the Fish and Wildlife Propagation beneficial use complies with and meets the discharge permit limitations but the flow immediately upstream from the discharge is less than one (1) cubic foot per second or when the flow falls below the seven-day, two-year low-flow, whichever is larger. For purposes of the permitting process, the regulatory low flow shall be the larger of one (1) cubic foot per second or the seven-day, two-year low flow; and
- (II) To streams listed as ephemeral in Appendix A.

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(ii) Equations are presented in Table 2 of Appendix G for those substances whose toxicity varies with water chemistry. Metals listed in Table 2 of Appendix G are measured as total metals in the water column.

(H) For purposes of determining permit conditions, criteria for dissolved metals identified in Table 3 of Appendix G of this Chapter may be ascertained and implemented as an alternative to the total recoverable metals criteria set forth in Table 2 of Appendix G. Such dissolved metals criteria apply to all waters of the state designated with any of the beneficial use sub-categories of Fish and Wildlife Propagation. Such dissolved metals criteria may be determined by multiplying the total recoverable numerical criteria in OAC 785:45 Appendix G, Table 2 by the conversion factors identified in Table 3 of Appendix G.

### (7) **Turbidity.**

(A) Turbidity from other than natural sources shall be restricted to not exceed the following numerical limits:

- (i) Cool Water Aquatic Community/Trout Fisheries: 10 NTUs;
- (ii) Lakes: 25 NTUs; and
- (iii) Other surface waters: 50 NTUs.

(B) In waters where background turbidity exceeds these values, turbidity from point sources shall be restricted to not exceed ambient levels.

(C) Numerical criteria listed in (A) of this paragraph apply only to seasonal base flow conditions.

(D) Elevated turbidity levels may be expected during, and for several days after, a runoff event.

### **785:45-5-19. Aesthetics**

(a) To be aesthetically enjoyable, the surface waters of the state must be free from floating materials and suspended substances that produce objectionable color and turbidity.

(b) The water must also be free from noxious odors and tastes, from materials that settle to form objectionable deposits, and discharges that produce undesirable effects or is a nuisance to aquatic life.

(c) The following criteria apply to protect this use:

(1) **Color.** Surface waters of the state shall be virtually free from all coloring materials which produce an aesthetically unpleasant appearance. Color producing substances, from other than natural sources, shall be limited to concentrations equivalent to 70 Platinum-cobalt true color units.

(2) **Nutrients.**

(A) **Narrative criterion applicable to all waters of the state.** Nutrients from point source discharges or other sources shall not cause excessive growth of periphyton, phytoplankton, or aquatic macrophyte communities which impairs any existing or designated beneficial use.

(B) **Numerical criterion applicable to waters designated Scenic Rivers.** The thirty (30) day geometric mean total phosphorus concentration in waters

designated "Scenic River" in Appendix A of this Chapter shall not exceed 0.037 mg/L. The criterion stated in this subparagraph (B) applies in addition to, and shall be construed so as to be consistent with, any other provision of this Chapter which may be applicable to such waters, ~~and such.~~ Such criterion became effective July 1, 2002 and shall be fully implemented within ten (10) years as provided in a separate rule promulgated by the Board as authorized by state law through Water Quality Standards Implementation Plans and other rules, permits, settlement agreements, consent orders, compliance orders, compliance schedules or voluntary measures designed to achieve full compliance with the criterion in the stream by June 30, 2012.

(3) **Solids (suspended and/or settleable).** The surface waters of the state shall be maintained so as to be essentially free of floating debris, bottom deposits, scum, foam and other materials, including suspended substances of a persistent nature, from other than natural sources.

(4) **Taste and Odor.** Taste and odor producing substances from other than natural origin shall be limited to concentrations that will not interfere with the production of a potable water supply by modern treatment methods or produce abnormal flavors, colors, tastes and odors in fish flesh or other edible wildlife, or result in offensive odors in the vicinity of the water, or otherwise interfere with beneficial uses.

## PART 5. SPECIAL PROVISIONS

### **785:45-5-25. Implementation Policies for the Antidegradation Policy Statement**

(a) The following provisions set forth exceptions to the limitations stated in 785:45-5-25(c) for additional protection of certain waters of the state:

(1) The limitations contained in 785:45-5-25(c)(1) for additional protection of Outstanding Resource Waters shall apply to all discharges from point sources except such limitations do not apply to discharges of stormwater from temporary construction activities. Discharges of stormwater from point sources existing as of June 25, 1992, whether or not such stormwater discharges were permitted as point sources prior to June 25, 1992, are also excepted from the 785:45-5-25(c)(1) rule prohibiting any new point source discharges, but such stormwater discharges are prohibited from increased load of any pollutant.

(2) The limitations for additional protection of Appendix B Waters (785:45-5-25(c)(2)), High Quality Waters (785:45-5-25(c)(3)), and Sensitive Public and Private Water Supplies (785:45-5-25(c)(4)), shall apply to discharges from all point sources except point source discharges of stormwater.

(b) For purposes of 785:45-5-25, the term "specified pollutants" means:

- (1) Oxygen demanding substances, measured as Carbonaceous Biochemical Oxygen Demand (CBOD) and/or Biochemical Oxygen Demand (BOD);
  - (2) Ammonia Nitrogen and/or Total Organic Nitrogen;
  - (3) Phosphorus;
  - (4) Total Suspended Solids (TSS);
  - (5) Such other substances as may be determined by the Oklahoma Water Resources Board.
- (c) The following limitations for additional protection apply to various waters of the state:

(1) **Outstanding Resource Waters (ORW).**

(A) Outstanding Resource Waters (ORW) are those waters of the state which constitute outstanding resources or are of exceptional recreational and/or ecological significance as described in 785:45-3-2(a); ~~Anti Degradation Policy Statement.~~

(B) The following waterbodies are prohibited from having any new point source discharge(s) of any pollutant or increased load of any pollutant from existing point source discharge(s):

- (i) Waterbodies designated "ORW" and/or "Scenic River" in Appendix A of this Chapter;
- (ii) Waterbodies located within the watersheds of waterbodies designated "Scenic River" in Appendix A of this Chapter ; and
- (iii) Waterbodies located within the boundaries of Appendix B areas which are specifically designated "ORW" in Appendix A of this Chapter.

(2) **Appendix B Waters.**

(A) Appendix B waters are those waters of the state which are located within the boundaries of areas listed in Appendix B of this Chapter, including but not limited to the National and State parks, forests, wilderness areas, wildlife management areas, and wildlife refuges. Appendix B also may include those areas which are inhabited by federally listed, threatened or endangered species, and other appropriate areas.

(B) Only those Appendix B waters specifically designated "ORW" in Appendix A of this Chapter shall be afforded the limitations for additional protection described in 785:45-5-25(c)(1)(B).

(C) New discharges or increased loading from existing discharges to Appendix B waters may be allowed under such conditions that ensure that the recreational and ecological significance of these waters will be maintained.

(D) Discharges or other activities associated with those waters listed in Appendix B, Table 2 containing Federally listed threatened or endangered species may be restricted through agreements between appropriate regulatory agencies and the United States Fish and Wildlife Service.

(3) **High Quality Waters (HQW).**

(A) High Quality Waters (HQW) are those waters of the state which possess existing water quality which exceeds that necessary to support propagation

of fishes, shellfishes, wildlife, and recreation as described in 785:45-3-2(b); ~~Anti Degradation Policy Statement,~~ and are designated "HQW" waters in Appendix A of this Chapter.

(B) All waterbodies designated with the limitation indicated by the letters "HQW" in Appendix A are prohibited from having any new point source discharge(s) of any pollutant or increased load or concentration of specified pollutants from existing point source discharge(s), provided however that new point source discharge(s) or increased load of specified pollutants described in 785:45-5-25(b) may be approved by the permitting authority in those circumstances where the discharger demonstrates to the satisfaction of the permitting authority that the a new point source discharge or increased load from an existing point source discharge will result in maintaining or improving the level of water quality which exceeds that necessary to support recreation and propagation of fishes, shellfishes, and wildlife of the direct receiving water and downstream waterbodies designated HQW. As specified in 785:45-3-2(b) and (d), no discharge of any pollutant to a water designated HQW may lower existing water quality.

(4) **Sensitive Public and Private Water Supplies (SWS).**

(A) Waters designated "SWS" are those waters of the state which constitute sensitive public and private water supplies and are listed in Appendix A of this Chapter as "SWS" waters.

(B) New point source discharges of any pollutant after June 11, 1989, and increased load of any specified pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of this Chapter with the limitation "SWS". Any discharge of any pollutant to a waterbody designated "SWS" which would, if it occurred, lower existing water quality shall be prohibited, provided however that new point source discharge(s) or increased load of specified pollutants described in 785:45-5-25(b) may be approved by the permitting authority in those circumstances where the discharger demonstrates to the satisfaction of the permitting authority that a new point source discharge or increased load from an existing point source discharge will result in maintaining or improving the water quality of both the direct receiving water and any downstream waterbodies designated SWS.

(5) **Prioritization of Limitations.** In situations where more than one beneficial use limitation exists for a waterbody, the more stringent limitation shall apply.

(6) **Non-Point Source Discharges or Runoff.** Best management practices for control of non-point source discharges or runoff should be implemented in watersheds of waterbodies designated "ORW", "HQW", or "SWS" in Appendix A of this Chapter and/or located within areas listed in Appendix B provided however that development

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of conservation plans shall be required in sub-watersheds where discharges or runoff from non-point sources are identified as causing, or significantly contributing to, degradation in a waterbody designated "ORW".

(7) **Culturally Significant Waters (CSW).**

(A) Waters designated as CSW in Appendix A of this Chapter are those identified by recognized Tribal authorities as critical to maintaining the waters' utility for cultural, historic, recreational or ceremonial uses and which may require more stringent protection measures to protect human health or aquatic life or both.

(B) All activities associated with a CSW may require consultation with the duly authorized Tribal authority to assure that the proposed activity is consistent with applicable Tribal environmental laws.

(d) The thirty (30) day geometric mean total phosphorus concentration in waters designated "Scenic River" in Appendix A of this Chapter shall not exceed 0.037 mg/L. This subsection (d) applies in addition to, and shall be construed so as to be consistent with, any other provision of this Chapter which may be applicable to such waters, ~~and such~~. Such criterion became effective July 1, 2002 and shall be fully implemented within ten (10) years as provided in a separate rule promulgated by the Board as authorized by state law through Water Quality Standards Implementation Plans and other rules, permits, settlement agreements, consent orders, compliance orders, compliance schedules or voluntary measures designed to achieve full compliance with the criterion in the stream by June 30, 2012.

**APPENDIX A. DESIGNATED BENEFICIAL USES FOR SURFACE WATERS [REVOKED]**

**APPENDIX A. DESIGNATED BENEFICIAL USES FOR SURFACE WATERS [NEW]**

(a) **Introduction.** The Tables that follow in this Appendix identify certain waterbodies throughout the state of Oklahoma and designate beneficial uses for those waterbodies. The waterbodies are identified by their name (e.g., "Horse Creek") or other description (e.g., "Tributary of Lebos Creek at Sec. 2, T2N, R 26W, IM", "Red River from the Arkansas State Line to the Kiamichi River") and a "WQM Segment" number. The WQM Segment number refers to one of the 59 water quality management segments in the 7 planning basins which correspond to the 7 Tables that follow. The segment numbers are assigned according to an Oklahoma Water Resources Board publication completed pursuant to a Clean Water Act Section 208 authorization during FY84. The first digit of the WQM Segment number indicates the basin number; the next three digits indicate the major drainage segment within that basin; and the last two digits indicate the subdivision of the major drainage segment. The Tables also set forth columns to show the beneficial uses or subcategories of uses which are designated for each identified waterbody.

(b) **Beneficial Use designations.** Designations of beneficial uses for a waterbody are reflected in the Tables by the presence of the following codes or a dot ("•") in the columns to the right of the waterbody name. An empty space in a column means that column's beneficial use or subcategory thereof is not designated for that waterbody.

- (1) EWS - Emergency Water Supply beneficial use
- (2) PPWS - Public and Private Water Supply beneficial use
- (3) F&W Prop. - Fish and Wildlife Propagation beneficial use
  - (A) WWAC - Warm Water Aquatic Community subcategory
  - (B) HLAC - Habitat Limited Aquatic Community subcategory
  - (C) CWAC - Cool Water Aquatic Community subcategory
  - (D) Trout - Trout Fishery (put and take) subcategory
- (4) Ag - Agriculture beneficial use
  - (A) 1 - Class I Irrigation
  - (B) 2 - Class II Irrigation
  - (C) 3 - Class III Irrigation
- (5) HP - Hydropower beneficial use
- (6) M&I - Industrial and Municipal process and cooling water
- (7) Rec - Recreation beneficial use
  - (A) PBCR - Primary Body Contact beneficial use
  - (B) SBCR - Secondary Body Contact beneficial use
- (8) Nav - Navigation beneficial use
- (9) Aes - Aesthetics beneficial use
- (10) A dot ("•") used in a column indicates that the beneficial use in that column's heading is designated for that waterbody without a more specific subcategory or other designation.

The criteria to protect the beneficial uses are provided in Subchapter 5 and Appendix G of this Chapter.

(c) **Limitations for Additional Protection.**

- (1) Limitations for additional protection are described in 785:45-5-25.
- (2) Waterbodies that are subject to limitations for additional protection in 785:45-5-25 are identified by the designation of any of the following codes in the "Limitations" column to the right of the waterbody's name:
  - (A) "ORW" - indicates waters designated Outstanding Resource Waters;
  - (B) "HQW" - indicates waters designated High Quality Waters; and
  - (C) "SWS" - indicates waters designated Sensitive Public and Private Water Supplies.

(d) **Remarks used in Appendix A.** The presence of any of the following footnotes in the "Remarks" column to the right of a waterbody's name denotes special circumstances which are applicable to that waterbody.

- (1) A footnote (1) designates those streams for which further investigations are pending. Beneficial use designations for those streams are provided in Subchapter 5 of this Chapter.
- (2) A footnote (2) indicates that criteria for the beneficial use of Primary Body Contact Recreation apply regardless of the recreation use designated.
- (3) A footnote (3) excludes the Scenic River designation from that portion of Lee Creek necessary for a dam to be built in the State of Arkansas with a crest elevation of no more than the 420 foot MSL elevation according to plans, specifications and conditions contained in U.S. Army Corps of Engineer Permit WD-050-03-3541 and in the Federal Energy Regulatory Commission License for Project No. 5251-002, which were approved by the U.S. Environmental Protection Agency. Changes in water quality caused by the impoundment of water by said dam shall not constitute a violation of Oklahoma's Water Quality Standards.
- (4) The remark "CSW" designates those waters identified as Culturally Significant Waters.
- (5) The remark "NLW" designates a nutrient-limited watershed.

TABLE 1.  
Designated Beneficial Uses of Surface Waters  
Water Quality Management Basin 1, Middle Arkansas River

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Arkansas River from mouth of Canadian River to the mouth of the Verdigris River including Webbers Falls Reservoir	121400	EWS	WWAC	•	•	•	PBCR	•	•		
Dirty Creek	120400	PPWS	WWAC	•		•	PBCR		•		
Tributary of Dirty Creek at SW 1/4, Sec. 31, T12N, R21E, IM	120400		HLAC	•		•	SBCR		•		
South Fork of Dirty Creek	120400		WWAC	•		•	PBCR		•		
Tributary of the South Fork of Dirty Creek at SW SE SE, Sec. 2, T10N, R19E, IM	120400		HLAC	•		•	SBCR		•		
Georges Fork	120400	EWS	WWAC	•		•	PBCR		•		
Tributary of Georges Fork at SE 1/4, Sec. 35, T12N, R19E, IM	120400	EWS	HLAC	•		•	SBCR		•		
Tributary of the South Fork of Dirty Creek at SE 1/4, Sec. 1, T12N, R18E, IM	120400		WWAC	•		•	PBCR		•		
Lower Illinois River from headwater of Robert S. Kerr Reservoir to Tenkiller Dam	121700	PPWS	Trout	1		•	PBCR	•	•	HQW	
Upper Illinois River from Tenkiller Dam, including Tenkiller Reservoir upstream to Barren Fork confluence	121700	PPWS	CWAC	1		•	PBCR		•		
Caney Creek	121700	PPWS	CWAC	•			PBCR		•		
Park Hill Branch	121700		WWAC	•		•	PBCR		•		
Barren Fork from mouth upstream to Hwy. 59	121700	PPWS	CWAC	1			PBCR		•	ORW	Scenic River
Tyner Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	
Dennison Hollow	121700	PPWS	CWAC	•			PBCR		•	ORW	
Peachtree Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	
Scraper Hollow	121700	PPWS	CWAC	•			PBCR		•	ORW	

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
England Hollow	121700	PPWS	CWAC	•			PBCR		•	ORW	
Green Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	
Shell Branch	121700	PPWS	CWAC	•			PBCR		•	ORW	
Barren Fork from Hwy. 59 to Arkansas State Line	121700	PPWS	CWAC	1			PBCR		•	ORW	
Evansville Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	
Upper Illinois River upstream of Barren Fork confluence	121700	PPWS	CWAC	1			PBCR		•	ORW	Scenic River
Tahlequah Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	
Flint Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	Scenic River
Sager Creek	121700	PPWS	CWAC	1			PBCR		•	ORW	
Ballard Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	
Tributary of Arkansas River at Sec. 7, T12N, R21E, IM	120400		WWAC	•		•	PBCR		•		
Greenleaf Creek including Greenleaf Lake and Watershed	120400	PPWS	WWAC	•		•	PBCR		•	SWS	
Star Lake	120400		WWAC	•		•	PBCR		•		
Sand Creek	120400		HLAC	•		•	SBCR		•		
Bayou Manard	120400	PPWS	WWAC	•		•	PBCR		•		
Cody Creek	120400	PPWS	WWAC	•		•	PBCR		•		
Grand River Main Stem (Grand Neosho River) from mouth to Kansas State Line, including Lake Hudson and (Grand) Lake o the Cherokees but excluding Fort Gibson Reservoir	121600	PPWS	WWAC	1	•	•	PBCR		•		
Fort Gibson Reservoir	121600	PPWS	WWAC	1	•	•	PBCR		•		NLW
Ranger Creek	121600	PPWS	WWAC	•		•	PBCR		•		
Fourteen Mile Creek	121600	PPWS	CWAC	•		•	PBCR		•	HQW	
Black Bird Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Clear Creek	121600	PPWS	CWAC	•		•	PBCR		•		

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Waterbody Name and Sequence	WOM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Spring Creek	121600	PPWS	CWAC	•		•	PBCR		•	HQW	
Little Spring Creek	121600	PPWS	CWAC	•		•	PBCR		•	HQW	
Double Spring Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Chouteau Creek	121600	PPWS	WWAC	•		•	PBCR		•		
Tributary of Chouteau Creek at SE 1/4, Sec. 13, T20N, R18E, IM	121600		WWAC	•		•	SBCR		•		
Tributary of Chouteau Creek at SE 1/4, Sec. 29, T20N, R19E, IM	121600		HLAC	•		•	SBCR		•		
Pryor Creek downstream from the road crossing in Sec. 30, T21N, R19E, IM	121610		WWAC	1		•	PBCR		•		
Pryor Creek upstream from the road crossing in Sec. 30, T21N, R19E, IM to the road crossing in Sec. 12, T21N, R18E, IM	121610	PPWS	WWAC	1		•	PBCR		•		
Pryor Creek upstream from the road crossing in Sec. 12, T21N, R18E, IM	121610		WWAC	1		•	SBCR		•		
Crutchfield Branch	121600		WWAC	•		•	PBCR		•		
Saline Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Little Saline Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Horse Creek	121600	EWS	WWAC	•		•	PBCR		•		
Spavinaw Creek below Spavinaw Lake dam	121600	PPWS	CWAC	1			PBCR		•		
Spavinaw Lake and watershed upstream of Spavinaw Lake dam	121600	PPWS	CWAC	1			PBCR		•	SWS	NLW
Eucha Lake and watershed	121600	PPWS	CWAC	1			PBCR		•	SWS	NLW
Brush Creek	121600	PPWS	CWAC	•			PBCR		•	HQW	
Beaty Creek	121600	PPWS	CWAC	•			PBCR		•	HQW	
Rock Creek	121600	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Big Cabin Creek downstream from the road crossing in Sec. 10, T24N, R20E, IM	121600	PPWS	WWAC	1		•	PBCR		•		
Mustang Creek	121600		WWAC	•		•	PBCR		•		
Big Cabin Creek upstream from the road crossing in Sec. 10, T24N, R20E, IM to the road crossing in Sec. 8, T26N, R20E, IM	121600		WWAC	1		•	SBCR		•		
Little Cabin Creek	121600		WWAC	•		•	PBCR		•		
Big Cabin Creek upstream from the road crossing in Sec. 8, T26N, R20E, IM	121600		WWAC	1		•	PBCR		•		
Drowning Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Tributary of Muskrat Creek in Sec. 36, T23N, R 23E, IM	121600		HLAC	•		•	SBCR		•		
Honey Creek	121600	PPWS	CWAC	•			PBCR		•	HOW	
Elm Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Whitewater Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Cave Springs Branch	121600	PPWS	CWAC	•		•	PBCR		•		
Elk River	121600	PPWS	CWAC	•			PBCR		•	HOW	
Hollow Creek	121600	PPWS	CWAC	1		•	PBCR		•		
Sycamore Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Brush Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Lost Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Spring River	121600	PPWS	CWAC	1		•	PBCR		•		
Shawnee Branch	121600	PPWS	CWAC	•		•	PBCR		•		
Flint Branch	121600	PPWS	CWAC	•		•	PBCR		•		
Warren Branch	121600	PPWS	CWAC	•		•	PBCR		•		
Devil's Hollow	121600	PPWS	CWAC	•		•	PBCR		•	HOW	

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Five Mile Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Hudson Creek	121600		WWAC	•		•	PBCR		•		
Tributary of Hudson Creek at SE 1/4, Sec. 30, T27N, R23E, IM	121600		HLAC	•		•	SBCR		•		
Tar Creek	121600		HLAC				SBCR				
Verdigris River from its mouth to Oolagah Reservoir Dam	121500	PPWS	WWAC	1	•	•	PBCR	•	•		
Tributary of Verdigris River at SW 1/4, Sec. 20, T16N, R19E, IM	121500		HLAC	•		•	SBCR		•		
Coal Creek (near Waggoner)	121500	PPWS	WWAC	•		•	PBCR		•		
Tributary of Verdigris River at SE 1/4, Sec. 34, T17N, R17E, IM	121500		HLAC	•		•	SBCR		•		
Coal Creek	121500	PPWS	WWAC	•		•	PBCR		•		
Indola Creek	121500		WWAC	•		•	PBCR		•		
Pea Creek	121500		WWAC	•		•	PBCR		•		
Adams Creek	121500	PPWS	WWAC	•		•	PBCR		•		
Salt Creek	121500		WWAC	•		•	PBCR		•		
Tributary of Salt Creek at NW 1/4, Sec. 1, T19N, R15E, IM	121500		HLAC	•		•	SBCR		•		
Dog Creek downstream from Lake Claremore	121500	PPWS	WWAC	•		•	PBCR		•		
Cat Creek	121500	EWS	WWAC	•		•	PBCR		•		
Tributary of Cat Creek at NW 1/4, Sec. 21, T21N, R16E, IM	121500	EWS	HLAC	•		•	SBCR		•		
Lake Claremore and Watershed	121500	PPWS	WWAC	•		•	PBCR		•	SWS	NLW
Chambers Creek	121500	EWS	HLAC	•			SBCR		•		
Mossy Creek	121500	EWS	HLAC	•			SBCR		•		
Spunky Creek	121500	EWS	WWAC	•		•	PBCR		•		
Tributary of Spunky Creek at Sec. 6, T19N, R15E	121500		HLAC	•		•	SBCR		•		
Tributary of Verdigris River at Sec. 28, T20N, R15E, IM	121500		HLAC	•		•	SBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Bird Creek	121300	PPWS	WWAC	1		•	PBCR		•		
Mingo Creek	121300	EWS	WWAC	•		•	PBCR		•		
Unnamed tributary of Mingo Creek	121300	EWS	HLAC	•		•	SBCR		•		
Owasso Creek	121300		HLAC	•		•	SBCR		•		
Tributary of Owasso Creek at SE 1/4, Sec. 31, T21N, R14E, IM	121300		HLAC	•		•	SBCR		•		
Yahola Lake and Watershed	121300	PPWS	WWAC	1		•	PBCR		•	SWS	
Flat Rock Creek	121300		WWAC	•		•	SBCR		•		
Tributary of Flat Rock Creek at SE 1/4, Sec. 18, T20N, R13E, IM	121300		HLAC	•		•	SBCR		•		
Delaware Creek	121300	PPWS	WWAC	•		•	PBCR		•		
Hominy Creek downstream from Skiatook Reservoir	121300	PPWS	WWAC	2		•	PBCR		•		
Hominy Creek upstream from and including Skiatook Reservoir	121300	PPWS	WWAC	2		•	PBCR		•	SWS	
Claremore Creek	121300	PPWS	WWAC	•		•	PBCR		•		
Hominy Municipal Lake and Watershed	121300	PPWS	WWAC	1		•	PBCR		•	SWS	
Candy Creek	121300	PPWS	WWAC	•		•	PBCR		•		
Pecan Hollow Creek	121300	PPWS	WWAC	•		•	PBCR		•	HOW	
Tributary of Bird Creek at Sec. 19, T24N, R11E, IM	121300		HLAC	•		•	SBCR		•		
Birch Creek downstream from Birch Reservoir	121300	PPWS	WWAC	•		•	PBCR		•		
Birch Reservoir and Watershed	121300	PPWS	WWAC	1		•	PBCR		•	SWS	
Tributary of Birch Creek at Sec. 14, T24N, R9E, IM	121300		HLAC	•		•	SBCR		•	SWS	
Bluestem Lake and Watershed	121300	PPWS	WWAC	1		•	PBCR		•	SWS	
Tributary of Verdigris River at Sec. 11, T21N, R15 E, IM	121500		HLAC	•		•	SBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Ass	Limitations	Remarks
Caney River from the mouth to the Kansas State Line	121400	PPWS	WWAC	1			PBCR		•		
Hulah Reservoir and watershed	121400	PPWS	WWAC	1			PBCR		•		NLW
Rabb Creek	121400	PPWS	WWAC	•			PBCR		•		
Keeler Creek	121400		WWAC	•			PBCR		•		
Tributary of Keeler Creek at NW 1/4 Sec. 19, T25N, R13E, IM	121400		HLAC	•			SBCR		•		
Sand Creek	121400	PPWS	WWAC	1			PBCR		•		
Buck Creek	121400	PPWS	WWAC	•			PBCR		•		
Coon Creek	121400	PPWS	WWAC	•			PBCR		•		
Deer Creek	121400		WWAC	•			PBCR		•		
Little Caney River including Copan Reservoir and Watershed	121400	PPWS	WWAC	1			PBCR		•	SWS	
Pond Creek	121400	PPWS	WWAC	•			PBCR		•		
Buck Creek	121400	PPWS	WWAC	•			PBCR		•		
Fourmile Creek	121500		WWAC	•			PBCR		•		
Verdigris River from and including Oologah Reservoir to the Kansas State Line	121510	PPWS	WWAC	1	•		PBCR	•	•		
Blue Creek	121510	PPWS	WWAC	•			PBCR		•		
Spencer Creek including Chelsea Reservoir and Watershed	121510	PPWS	WWAC	1			PBCR		•	SWS	
Lightning Creek	121510	PPWS	WWAC	•			PBCR		•		
Salt Creek	121510	PPWS	WWAC	•			PBCR		•		
Big Creek	121510	PPWS	WWAC	•			PBCR		•		
California Creek	121510	PPWS	WWAC	•			PBCR		•		
Unnamed tributary (return flow, City of Delaware)	121510	EWS	HLAC	•			SBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Ass	Limitations	Remarks
Tributary to Oologah Reservoir NW 1/4, Sec. 5, T26N, R16E, IM	121510	EWS	HLAC	•		•	SBCR		•		
Snow Creek	121510	PPWS	WWAC	•		•	PBCR		•		
Onion Creek	121510	PPWS	WWAC	•		•	PBCR		•		
Arkansas River from mouth of Verdigris River to Keystone Dam	120410 & 120420	EWS	WWAC	•	•	•	SBCR	•	•		(2)
Pecan Creek	120410	PPWS	WWAC	•		•	PBCR		•		
Cloud Creek	120410	PPWS	WWAC	•		•	PBCR		•		
Ash Creek	120410	PPWS	WWAC	•		•	PBCR		•		
Snake Creek	120410	PPWS	WWAC	•		•	PBCR		•		
Posey Creek	120420		WWAC	•		•	PBCR		•		
Polecat Creek downstream from Lake Heyburn	120420		WWAC	•		•	PBCR		•		
Coal Creek downstream from Sec. 35, T18N, R12E, IM	120420	PPWS	WWAC	1			PBCR		•		
Coal Creek upstream from Sec. 35, T18N, R12E, IM	120420	PPWS	HLAC	1			PBCR		•		
Rock Creek downstream from Sahoma Lake	120420		WWAC	•		•	PBCR		•		
Childress Creek	120420		HLAC	•		•	SBCR		•		
Little Polecat Creek	120420		WWAC	•		•	SBCR		•		
Sahoma Reservoir and Watershed	120420	PPWS	WWAC	1		•	PBCR		•	SWS	
Heyburn Lake and Watershed	120420	PPWS	WWAC	1		•	PBCR		•	SWS	
Shell Creek downstream from Shell Lake	120420	PPWS	WWAC	•		•	PBCR		•		
Shell Lake and Watershed	120420	PPWS	WWAC	1		•	PBCR		•	SWS	

TABLE 2.  
Designated Beneficial Uses of Surface Waters  
Water Quality Management Basin 2, Lower Arkansas River Basin

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Arkansas River from the Arkansas State Line to the mouth of the Canadian River including R.S. Kerr Reservoir	220200	PPWS	WWAC	1	•	•	PBCR	•	•		
Lee Creek downstream from the 420 ft. elevation level	220200	PPWS	CWAC	1			PBCR		•	HOW	HOW
Lee Creek upstream from the 420 ft. elevation level	220200	PPWS	CWAC	1			PBCR		•	ORW	Scenic River (3)
Webbers Creek	220200	PPWS	CWAC	•			PBCR		•	ORW	
Briar Creek (Bear Creek)	220200	PPWS	CWAC	•			PBCR		•	ORW	
Little Lee Creek	220200	PPWS	CWAC	1			PBCR		•	ORW	Scenic River
Jenkins Creek	220200	PPWS	CWAC	1			PBCR		•	ORW	
Poteau River downstream from Brazil Creek	220100	PPWS	WWAC	1		•	PBCR		•		
Tributary of Cedar Creek at Sec. 8, T9N, R27E, IM	220100	PPWS	WWAC	•		•	PBCR		•		
Spiro Lake and Watershed	220100	PPWS	WWAC	•		•	PBCR		•	SWS	
James Fork	220100	PPWS	WWAC	•		•	PBCR		•		
Brazil Creek	220100	PPWS	WWAC	1		•	PBCR		•		
Poteau River upstream from Brazil Creek	220100	PPWS	WWAC	1		•	PBCR		•		
Wister Reservoir and watershed	220100	PPWS	WWAC	1		•	PBCR		•		
Riddle Creek	220100	PPWS	WWAC	1		•	PBCR		•		NLW
Tributary of Riddle Creek at SE 1/4 Sec. 4, T07N, R26E, IM	220100		HLAC	•		•	SECR		•		
Sugarloaf Creek	220100	PPWS	WWAC	1		•	SECR		•		
Morris Creek	220100		WWAC	•		•	PBCR		•		
Caston Creek	220100	PPWS	WWAC	1		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Coal Creek	220100	EWS	WWAC	•		•	PBCR		•		
Fourche Maline Creek	220100	PPWS	WWAC	1		•	PBCR		•		
Little Fourche Maline Creek	220100	PPWS	WWAC	•		•	PBCR		•		
Bandy Creek	220100		WWAC	•		•	PBCR		•		
Tributary of Bandy Creek at NE 1/4, Sec. 17, T5N, R19E, IM	220100		WWAC	•		•	SBCR		•		
Wilburton City Lake and Watershed	220100	PPWS	WWAC	1		•	PBCR		•	SWS	
Tributary of Fourche Maline Creek at SE 1/4, Sec. 12, T5N, R19E, IM	220100		HLAC	•		•	SBCR		•		
Coon Creek Lake and Watershed	220100	PPWS	WWAC	1		•	PBCR		•	SWS	
Black Fork downstream from Cedar Creek	220100	PPWS	WWAC	•		•	PBCR		•		
Black Fork upstream from Cedar Creek	220100	PPWS	CWAC	•			PBCR		•	HQW	
Cedar Creek	220100	PPWS	WWAC	•			PBCR		•		
Big Creek	220100	PPWS	CWAC	•			PBCR		•		
Tributary of Big Creek at NE 1/4, Sec. 22, T3N, R26E, IM	220100	EWS	WWAC	•		•	PBCR		•		
Oil Branch	220100		WWAC	•		•	PBCR		•		
Camp Creek	220200	PPWS	CWAC	•			PBCR		•		
Big Skin Bayou Creek	220200	PPWS	WWAC	•		•	PBCR		•		
Cache Creek	220200	PPWS	WWAC	•		•	PBCR		•		
Onion Creek	220200		HLAC	•		•	SBCR		•		
Sans Bois Creek	220200	PPWS	WWAC	•		•	PBCR		•		
John Wells Reservoir and Watershed	220200	PPWS	WWAC	•		•	PBCR		•	SWS	
Beaver Creek	220200	EWS	WWAC	•		•	PBCR		•		
Sallsaw Creek downstream from U.S. Hwy. 64	220200	PPWS	CWAC	1		•	PBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Shilo Branch	220200		WWAC	•		•	PBCR		•		
Tributary of Shilo Branch at SW 1/4, Sec. 1, T11N, R23E, IM	220200		HLAC	•		•	SBCR		•		
Little Sallisaw Creek (Cedar Creek)	220200	PPWS	WWAC	•		•	PBCR		•		
Sallisaw Creek upstream from U.S. Hwy 64	220200	PPWS	CWAC	1		•	PBCR		•	HOW	
Brushy Creek downstream from Brushy Lake	220200	PPWS	CWAC	•		•	PBCR		•		
Brushy Lake and Watershed	220200	PPWS	CWAC	•		•	PBCR		•	SWS	
Greasy Creek	220200	PPWS	CWAC	•		•	PBCR		•		
Vian Creek	220200	PPWS	CWAC	•		•	PBCR		•		
Little Vian Creek	220200	PPWS	CWAC	2		•	PBCR		•		
Canadian River from mouth to Eufaula Reservoir Dam	220300	PPWS	WWAC	1	•	•	PBCR		•		
Taloka Creek	220300	PPWS	WWAC	•		•	PBCR		•		
Snake Creek	220300		WWAC	•		•	SBCR		•		
Emachaya Creek	220300	PPWS	WWAC	1		•	PBCR		•		
Canadian River including Eufaula Reservoir (excluding the North Canadian River) to its confluence with Little River	220600	PPWS	WWAC	1		•	PBCR		•		
Mud Creek	220600	PPWS	WWAC	1		•	PBCR		•		
Longtown Creek	220600	PPWS	WWAC	•		•	PBCR		•		
Gibson Creek	220600		HLAC	•		•	SBCR		•		
Tributary of Gibson Creek at NW NW Sec. 18, T8N, R16E, IM	220600		HLAC	•		•	SBCR		•		
Gaines Creek	220600	PPWS	WWAC	•		•	PBCR		•		
Coal Creek	220600	PPWS	WWAC	•		•	PBCR		•		
McAlester Lake and Watershed	220600	PPWS	WWAC	1		•	PBCR		•	SWS	
Deer Creek	220600		WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Sandy Creek	220600		WWAC	•		•	SBCR		•		
Tributary of Sandy Creek at NW 1/4, Sec. 3, T5N, R14E, IM	220600		WWAC	•		•	SBCR		•		
Tributary of Coal Creek at SW NW SW Sec. 18, T5N, R12E, IM	220600		HLAC	•		•	SBCR		•		
Ash Creek	220600	PPWS	WWAC	•		•	PCBR		•		
Mud Creek	220600		WWAC	•		•	PBCR		•		
Brushy Creek	220600	PPWS	WWAC	1		•	PBCR		•		
Blue Creek	220600	PPWS	WWAC	1		•	PBCR		•		
Peaceable Creek	220600	PPWS	WWAC	1		•	PBCR		•		
Chun Creek upstream from Sec. 15, T4N, R14E, IM	220600	EWS	WWAC	•		•	SBCR		•		
Tributary of Chun Creek at SW 1/4, Sec. 16, T4N, R14E, IM	220600		HLAC	•		•	SBCR		•		
Chun Creek in and downstream from Sec. 15, T4N, R14E, IM	220600	EWS	WWAC	•		•	PBCR		•		
Bull Creek downstream from Brown Lake	220600		WWAC	•		•	PBCR		•		
Brown Lake and Watershed	220600	PPWS	WWAC	1		•	PBCR		•	SWS	
Mill Creek	220600	PPWS	WWAC	•		•	PCBR		•		
Unnamed tributary of Canadian River at SE 1/4, Sec. 22, T6N, R10E, IM	220600		HLAC	•		•	SBCR		•		

TABLE 3.  
Designated Beneficial Uses of Surface Waters  
Water Quality Management Basin 3, Upper Red River Basin

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Lake Texoma	311100 & 310800	PPWS	WWAC	2	•	•	PBCR		•		
Glasses Creek	310800	PPWS	WWAC	1		•	PBCR		•		
Tributary at Old Channel Washita, NE 1/4, Sec. 33, T5S, R7E, IM	310800	EWS	HLAC	•		•	SBCR		•		
Pennington Creek	310800	PPWS	CWAC	1		•	PBCR		•	HOW	
Mill Creek	310800	PPWS	WWAC	•		•	PBCR		•		
Tributary of Three Mile Creek at SW Sec. 7, T2S, R5E, IM to SE Sec. 12, T2S, R4E	310800		HLAC	•		•	SBCR		•		
Washita River upstream from the headwaters of Lake Texoma including Foss Reservoir	310800, 310810, 310820, 310830 & 310840	PPWS	WWAC	1		•	PBCR		•		
Oil Creek	310800	PPWS	WWAC	•		•	PBCR		•		
Caddo Creek	310800	PPWS	WWAC	•		•	PBCR		•		
Sand Creek	310800		WWAC	•		•	PBCR		•		
Rock Creek downstream from Site #18 Dam	310800	PPWS	WWAC	•		•	PBCR		•		
SCS Site #18 including Watershed	310800	PPWS	WWAC	•		•	PBCR		•		
Hickory Creek downstream from Mountain Lake	310800	PPWS	WWAC	•		•	PBCR		•	SWS	
Mountain Lake and Watershed	310800	PPWS	WWAC	•		•	PBCR		•		
Rock Creek including Arbuckle Reservoir	310800	PPWS	WWAC	1		•	PBCR		•	SWS	
Guy Sandy Creek	310800	PPWS	WWAC	•		•	PBCR		•	SWS	
Dry Sandy Creek	310800	PPWS	WWAC	1		•	PBCR		•	HOW	
Tributary of Dry Sandy Creek at Sec. 7, T1S, R2E, IM	310800		HLAC	•		•	SBCR		•		
Honey Creek	310800	PPWS	WWAC	•		•	PBCR		•	HOW	

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Chigley Sandy Creek	310800	PPWS	WWAC	•		•	PBCR		•		
Withhorse Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Sandy Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Rock Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Salt Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Black Bear Creek downstream from Fuqua Reservoir	310810	PPWS	WWAC	•		•	PBCR		•		
Fuqua Reservoir and Watershed	310810	PPWS	WWAC	•		•	PBCR		•	SWS	
Duncan Lake and Watershed	310810	PPWS	WWAC	•		•	PBCR		•	SWS	
Clear Creek downstream from Clear Creek Lake	310810	PPWS	WWAC	•		•	PBCR		•		
Clear Creek Lake and Watershed	310810	PPWS	WWAC	•		•	PBCR		•		
Humphreys Lake and Watershed	310810	PPWS	WWAC	•		•	PBCR		•	SWS	
Kickapoo Sandy Creek	310810	PPWS	WWAC	•		•	PBCR		•	SWS	
Turkey Sandy Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Tributary of Turkey Sandy Creek at SE 1/4, Sec. 26, T2N, R1E, IM	310810		WWAC	•		•	PBCR		•		
W. Sandy Creek (upper) upstream from Sec. 34, T2N, R1E, IM	310810		HLAC	•		•	SBCR		•		
W. Sandy Creek (lower) downstream from Sec. 27, T2N, R1E, IM	310810		WWAC	•		•	PBCR		•		
Red Branch	310810		WWAC	•		•	SBCR		•		
Rush Creek downstream from U.S. Hwy. 77 near Pauls Valley	310810		HLAC	•		•	SBCR		•		
Rush Creek upstream from U.S. Hwy. 77 near Pauls Valley	310810		WWAC	•		•	PBCR		•		
Taylor (Marlow) Lake near Rush Springs	310810	PPWS	WWAC	•		•	PBCR		•		NLW

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Cherokee Sandy Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Peavine Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Washington Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Pauls Valley Reservoir and Watershed	310810	PPWS	WWAC	•		•	PBCR		•	SWS	
Owl Creek	310810		WWAC	•		•	PBCR		•		
Beef Creek	310810	EWS	HLAC	•		•	SBCR		•		
Tributary of Beef Creek at SE 1/4, Sec.15, T4N, R2W, IM	310810	EWS	HLAC	•		•	SBCR		•		
Finn Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Criner Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Colbert Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Roaring Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Lafin Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Winter Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Little Washita River	310820	PPWS	WWAC	1		•	PBCR		•		
Gladys Creek downstream from U.S. Hwy. 277	310820		HLAC	•		•	SBCR		•		
Gladys Creek upstream from U.S. Hwy. 277	310820	PPWS	WWAC	•		•	PBCR		•		
Bitter Creek	310820	PPWS	WWAC	•		•	PBCR		•		
East Fork of Bitter Creek	310820	PPWS	WWAC	•		•	PBCR		•		
West Fork of Bitter Creek	310820	PPWS	WWAC	•		•	PBCR		•		
Tributary of Washita River at NE 1/4, Sec. 35, T7N, R7W, IM	310820		HLAC	•		•	SBCR		•		
Ionline Creek	310820	PPWS	WWAC	•		•	PBCR		•		
Jack Hollow Creek	310820	PPWS	WWAC	•		•	PBCR		•		
Spring Creek including Chickasha Reservoir	310830	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Stinking Creek	310830	PPWS	WWAC	•		•	PBCR		•		
Delaware Creek	310830		WWAC	•		•	SBCR		•		
Sugar Creek	310830		WWAC	•		•	SBCR		•		
Tributary of Sugar Creek at NW 1/4, Sec. 29, T11N, R11W, IM	310830		HLAC	•		•	SBCR		•		
Cobb Creek downstream from Fort Cobb Lake	310830	PPWS	WWAC	•		•	PBCR		•		
Fort Cobb Lake and Watershed including Crowder Lake and watershed	310830	PPWS	WWAC	•		•	PBCR		•	SWS	NLW
Lake Creek	310830	PPWS	WWAC	•		•	PBCR		•	SWS	
Stinking Creek	310830	PPWS	WWAC	•		•	PBCR		•		
Rainy Mountain Creek downstream from S.H. 9	310830		WWAC	•		•	PBCR		•		
Rainy Mountain Creek upstream from S.H. 9	310830		WWAC	•		•	PBCR		•		
Oak Creek	310830	PPWS	WWAC	•		•	SBCR		•		
Vandenwork Lake and watershed	310830		WWAC	•		•	PBCR		•		NLW
Two Baby Creek	310830		WWAC	•		•	PBCR		•		
Cavalry Creek	310830	PPWS	WWAC	•		•	PBCR		•		
N. Cavalry Creek	310830	EWS	HLAC	•		•	SBCR		•		
Tributary to N. Cavalry Creek at NW 1/4, Sec. 11, T9N, R17W, IM	310830	EWS	HLAC	•		•	SBCR		•		
Boggy Creek	310830		WWAC	•		•	PBCR		•		
Beaver Creek	310830		WWAC	•		•	SBCR		•		
Barnitz Creek	310830	PPWS	WWAC	•		•	PBCR		•		
East Barnitz Creek	310830	PPWS	WWAC	•		•	PBCR		•		
West Barnitz Creek	310830	PPWS	WWAC	•		•	PBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Turkey Creek downstream from Clinton Lake	310830		WWAC	•		•	PBCR		•		
Clinton Lake and Watershed	310830	PPWS	WWAC	•		•	PBCR		•	SWS	
Oak Creek	310830	PPWS	WWAC	•		•	PBCR		•		
Panther Creek	310840	PPWS	WWAC	•		•	PBCR		•		
Quartermaster Creek	310840	PPWS	WWAC	•		•	PBCR		•		
Tributary of Quartermaster Creek at Sec. 17, T16N, R20W, IM	310840		HLAC	•		•	SBCR		•		
Hay Creek	310840	PPWS	WWAC	•		•	PBCR		•		
White Shield Creek	310840		HLAC	•		•	SBCR		•		
Sandstone Creek	310840	PPWS	WWAC	•		•	PBCR		•		
Dead Indian Creek	310840	PPWS	WWAC	•		•	PBCR		•		
Sergeant Major Creek	310840	PPWS	HLAC	•		•	SBCR		•		
Croton Creek	310840	PPWS	WWAC	•		•	PBCR		•		
Rush Creek	310840	PPWS	WWAC	•		•	PBCR		•		
Hickory Creek	311100	PPWS	WWAC	1		•	PBCR		•		
Anadarche Creek downstream from Lake Murray	311100	PPWS	WWAC	•		•	PBCR		•		
Lake Murray and Watershed	311100	PPWS	WWAC	•		•	PBCR		•		
Red River from headwaters of Lake Texoma to Cache Creek	311100 & 311120	PPWS	WWAC	•		•	PBCR		•	SWS	
Walnut Bayou	311100	PPWS	WWAC	•		•	PBCR		•		
Simon Creek	311100	PPWS	WWAC	•		•	PBCR		•		
Walnut Creek	311100	PPWS	WWAC	2		•	PBCR		•		
Tributary of Walnut Creek at Sec. 28, T4S, R2W, IM	311100		HLAC	•		•	SBCR		•		
Whiskey Creek	311100		HLAC	•		•	SBCR		•		
Cottonwood Creek	311100	PPWS	WWAC	1		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Ass	Limitations	Remarks
Tributary of Cottonwood Creek at Sec. 16, T4S, R1W, IM	311100		HLAC	•		•	SBCR		•		
Bull Creek	311100		HLAC	•		•	SBCR		•		
Mud Creek	311100	PPWS	WWAC	•		•	PBCR		•		
Clear Creek	311100	PPWS	WWAC 1	•		•	PBCR		•		
North Mud Creek	311100	PPWS	HLAC 1	•		•	PBCR		•		
Tributary of North Mud Creek at SW 1/4, Sec. 34, T4S, R4W, IM	311100		HLAC	•		•	SBCR		•		
West Mud Creek	311100	PPWS	WWAC 1	•		•	PBCR		•		
Negro Creek	311100	PPWS	WWAC	•		•	PBCR		•		
Willow Branch	311100	PPWS	WWAC	•		•	PBCR		•		
Crooked Creek	311100	PPWS	WWAC	•		•	PBCR		•		
Deer Creek	311100	PPWS	WWAC	•		•	PBCR		•		
Red Creek	311100	PPWS	WWAC	•		•	PBCR		•		
Fleetwood Creek	311100	PPWS	WWAC	•		•	PBCR		•		
Beaver Creek downstream from Waurika Reservoir	311200	PPWS	WWAC 1	•		•	PBCR		•		
Cow Creek	311200	EWS	WWAC	•		•	PBCR		•		
Dry Creek	311200	PPWS	WWAC	•		•	PBCR		•		
Cotton Creek	311200	PPWS	WWAC	•		•	PBCR		•		
Clarity Creek	311200	EWS	WWAC	•		•	PBCR		•		
East Cow Creek	311200	EWS	HLAC	•		•	SBCR		•		
Tributary of East Cow Creek SW 1/4, Sec. 15, T1S, R7W, IM	311200	EWS	HLAC	•		•	SBCR		•		
Beaver Creek upstream from and including Waurika Reservoir	311210	PPWS	WWAC	•		•	PBCR		•	SWS	
Walker Creek	311210	PPWS	WWAC 1	•		•	PBCR		•	SWS	

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Little Beaver Creek	311210	PPWS	WWAC	•		•	PBCR		•	SWS	
Stage Stand Creek	311210	PPWS	WWAC	•		•	PBCR		•	SWS	
Hell Creek	311210	PPWS	WWAC	•		•	PBCR		•	SWS	
Ninemile Beaver Creek	311210	PPWS	WWAC	1		•	PBCR		•		
Cache Creek	311300	PPWS	WWAC	•		•	PBCR		•		
West Cache Creek downstream from Panther Creek	311310	PPWS	WWAC	•		•	PBCR		•		
Deep Red Creek	311310	PPWS	WWAC	•		•	PBCR		•		
Little Deep Red Creek	311310	PPWS	WWAC	•		•	PBCR		•		
Jack Creek	311310	PPWS	WWAC	•		•	PBCR		•		
East Jack Creek	311310	PPWS	WWAC	•		•	PBCR		•		
Horse Creek	311310	PPWS	WWAC	•		•	PBCR		•		
Deadman Creek	311310	PPWS	WWAC	•		•	PBCR		•		
Blue Beaver Creek	311310	PPWS	WWAC	•		•	PBCR		•		
Post Oak Creek	311310	PPWS	WWAC	•		•	PBCR		•		
Crater Creek	311310	PPWS	WWAC	•		•	PBCR		•		
Panther Creek	311310	PPWS	WWAC	•		•	PBCR		•	HOW	
West Cache Creek upstream from Panther Creek	311310	PPWS	WWAC	•		•	PBCR		•	HOW	
East Cache Creek downstream from Lake Ellsworth	311300	PPWS	WWAC	1		•	PBCR		•	HOW	
Temple Lake and Watershed	311300	PPWS	WWAC	•		•	PBCR		•	SWS	
Walters Lake and Watershed	311300	PPWS	WWAC	•		•	PBCR		•	SWS	
Ninemile Creek	311300	PPWS	WWAC	•		•	PBCR		•		
Tributary to Ninemile Creek within Sec. 23, T 1 N, R 11 W1M including Comanche Lake	311300	PPWS	WWAC	•		•	PBCR		•		
Wolf Creek	311300	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Ass	Limitations	Remarks
Medicine Creek downstream from Lake Lawtonka	311300	PPWS	WWAC	1			PBCR				
Elmer Thomas Lake and Watershed	311300	PPWS	WWAC				PBCR			SWS	
Lawtonka Lake and Watershed	311300	PPWS	WWAC				PBCR			SWS	
Ellsworth Lake and Watershed	311300	PPWS	WWAC				PBCR			SWS	
Red River from Cache Creek to North Fork of the Red River	311310	EWS	WWAC				PBCR				
Rabbit Creek	311310	PPWS	WWAC				PBCR				
Tributary of Red River at Sec. 29, T4S, R13W, IM	311310		HLAC				SBCR				
Blue Creek	311310	PPWS	WWAC				PBCR				
Suttle Creek	311310		WWAC				SBCR				
Tributary of Suttle Creek at SW 1/4, Sec. 20, T3S, R17W, IM	311310		HLAC				SBCR				
North Fork of the Red River including Altus Reservoir	311500 & 311510	PPWS	WWAC	3			PBCR				
Stinking Creek	311500	PPWS	WWAC				PBCR				
Tributary of Stinking Creek at SE 1/4, Sec. 30, T2N, R19W, IM	311500	EWS	HLAC				SBCR				
Otter Creek	311500	PPWS	WWAC				PBCR				
West Otter Creek downstream from Tom Steed Reservoir	311500	PPWS	WWAC				PBCR				
Tom Steed Reservoir and Watershed	311500	PPWS	WWAC				PBCR			SWS	
Glen Creek	311500	PPWS	WWAC				PBCR			SWS	
Elk Creek downstream from the confluence with Little Elk Creek	311500	PPWS	WWAC	2			PBCR				
Elk Creek from headwaters to confluence with Little Elk Creek	311500		HLAC	2			SBCR				
Little Elk Creek downstream from Lake Hobart	311500	PPWS	WWAC				PBCR				
Hobart Lake and Watershed	311500	PPWS	WWAC				PBCR			SWS	
Spring Creek	311500	PPWS	WWAC				PBCR				

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Elk City Lake and watershed	311500		WWAC	•		•	PBCR		•		NLW
Elm Fork of the Red River	311800	PPWS	WWAC	3		•	PBCR		•		
Haystack Creek	311800	PPWS	WWAC	•		•	PBCR		•		
Deer Creek	311800	PPWS	WWAC	•		•	PBCR		•		
Fish Creek	311800	PPWS	WWAC	•		•	PBCR		•		
Bull Creek	311800	PPWS	WWAC	•		•	PBCR		•		
North Elm Creek	311800	PPWS	WWAC	•		•	PBCR		•		
Flat Creek	311510		WWAC	•		•	PBCR		•		
Timber Creek	311510	PPWS	WWAC	•		•	PBCR		•		
Sand Creek	311510	PPWS	WWAC	•		•	PBCR		•		
Long Creek	311510	PPWS	WWAC	•		•	PBCR		•		
Turkey Creek	311510	PPWS	WWAC	•		•	PBCR		•		
Starvation Creek	311510	PPWS	WWAC	•		•	PBCR		•		
Buffalo Creek	311510	PPWS	WWAC	•		•	PBCR		•		
Sweetwater Creek	311510	PPWS	WWAC	•		•	PBCR		•		
Red River from confluence of the North Fork of the Red River to Buck Creek	311600	EWS	WWAC	•		•	PBCR		•		
Salt Fork of the Red River to the Texas State Line	311600	PPWS	WWAC	3		•	PBCR		•		
Turkey Creek	311600	PPWS	WWAC	1		•	PBCR		•		
Bitter Creek downstream of the boundary of Sections 3 & 2, T1N, R21W, IM	311600	EWS	WWAC	1		•	SBCR		•		
Bitter Creek upstream of the boundary of Sections 3 & 2, T1N, R21W, IM	311600	EWS	HLAC	1		•	SBCR		•		
Gypsum Creek	311600	PPWS	WWAC	•		•	PBCR		•		
Sandy Creek	311600	EWS	HLAC	1		•	SBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Lebos Creek	311600		HLAC	•		•	SBCR		•		
Tributary of Lebos Creek at Sec. 2, T2N, R26W, IM	311600		HLAC	•		•	SBCR		•		
Prairie Dog Town Fork of the Red River from confluence of Buck Creek to 100 degree West Longitude	311600	EWS	WWAC	•		•	PBCR		•		

TABLE 4.  
Designated Beneficial Uses of Surface Waters  
Water Quality Management Basin 4, Lower Red River

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Ass	Limitations	Remarks
Red River from the Arkansas State Line to the Kiamichi River	410100	PPWS	WWAC	2		•	PBCR		•		
Norwood Creek	410100	PPWS	WWAC	•		•	PBCR		•		
Waterhole Creek	410100	PPWS	WWAC	•		•	PBCR		•		
Buzzard Creek	410100		WWAC	•		•	PBCR		•		
Tributary of Buzzard Creek at SE 1/4, Sec. 7, T7S, R22E, IM	410100		HLAC	•		•	SBCR		•		
Garland Creek	410100		WWAC			•	PBCR				
Tributary of Garland Creek at SE 1/4, Sec. 34, T6S, R21E, IM	410100		HLAC	•		•	SBCR		•		
Little River from the Arkansas State Line to Pine Creek Dam	410200 & 410210	PPWS	CWAC	1			PBCR		•	HQW	
Rock Creek	410200	PPWS	CWAC	•		•	PBCR		•		
Mountain Fork River downstream from U.S. Hwy 70 bridge	410210	PPWS	CWAC	1		•	PBCR		•		
Mountain Fork River upstream from U.S. Hwy 70 bridge to Broken Bow Dam	410210	PPWS	Trout	1			PBCR		•	HQW	
Upper Mountain Fork River from Broken Bow Dam including Broken Bow Reservoir to the 600 foot elevation level	410210	PPWS	CWAC	1	•		PBCR		•	SWS	
Egypt Creek	410210	PPWS	CWAC	•			PBCR		•	SWS	
Otter Creek	410210	PPWS	CWAC	•			PBCR		•	SWS	
Parlither Creek	410210	PPWS	CWAC	•			PBCR		•	ORW	
Buffalo Creek	410210	PPWS	CWAC	•			PBCR		•	SWS	
Mine Creek	410210		WWAC	•			PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Upper Mountain Fork River upstream from the 600 foot elevation level	410210	PPWS	CWAC	1			PBCR		•	ORW	Scenic River
Boktuklo Creek	410210	PPWS	CWAC	1			PBCR		•	ORW	
Blue Creek	410210	PPWS	CWAC	•			PBCR		•	ORW	
Big Eagle Creek	410210	PPWS	CWAC	1			PBCR		•	ORW	
Little Eagle Creek	410210	PPWS	CWAC	•			PBCR		•	ORW	
Dry Creek	410210	WWAC		•			PBCR		•		
Cucumber Creek	410210	PPWS	CWAC	1			PBCR		•	ORW	
Beech Creek	410210	PPWS	CWAC	1			PBCR		•	ORW	
Cow Creek	410210	PPWS	CWAC	1			PBCR		•	ORW	
Yanubbe Creek	410200	PPWS	CWAC	•		•	PBCR		•		
Tributary of Yanubbe Creek at NE 1/4, Sec. 29, T6S, R25E, IM	410200		HLAC	•		•	SBCR		•		
Mud Creek	410200	EWS	WWAC	•		•	SBCR		•		
Tributary of Mud Creek at SE 1/4, Sec. 31, T7S, R24E, IM	410100		HLAC	•		•	SBCR		•		
Yashau Creek	410200	PPWS	CWAC	1		•	PBCR		•		
Lukfata Creek	410210	PPWS	CWAC	•			PBCR		•	HQW	
Glover River	410210	PPWS	CWAC	1			PBCR		•	HQW	
Cedar Creek	410210	PPWS	CWAC	1			PBCR		•	HQW	
Carter Creek	410210	PPWS	CWAC	•			PBCR		•	HQW	
Pine Creek	410210	PPWS	CWAC	•			PBCR		•	HQW	
West Fork	410210	PPWS	CWAC	•		•	PBCR		•	HQW	
Silver Creek	410210	WWAC		•			PBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Bluff Creek	410210	PPWS	CWAC	•			PBCR		•	HQW	
East Fork	410210	PPWS	CWAC	•			PBCR		•	HQW	
Horse Head Creek	410210	PPWS	WWAC	1		•	PBCR		•		
Tributary of Horse Head Creek at Sec. 10, T6S, R22E, 1M	410210		HLAC	•		•	SBCR		•		
Cypress Creek	410210	PPWS	CWAC	•		•	PBCR		•	HQW	
Little River upstream from and including Pine Creek Reservoir	410210	PPWS	CWAC	1	•		PBCR		•	HQW	
Pine Creek	410210	PPWS	CWAC	•			PBCR		•	HQW	
Terrapin Creek	410210	PPWS	CWAC	•			PBCR		•	HQW	
Houston Creek	410210	PPWS	CWAC	•			PBCR		•	HQW	
Caney Creek	410210		WWAC	•			PBCR		•		
Cloudy Creek	410210	PPWS	CWAC	•			PBCR		•	HQW	
Jack Creek	410210	PPWS	CWAC	•			PBCR		•	HQW	
Black Fork	410210	PPWS	CWAC	•			PBCR		•	HQW	
Red River upstream from the Kiamichi River to the Blue River	410400	PPWS	WWAC	•		•	PBCR		•		
Kiamichi River including Hugo Reservoir to U.S. Hwy. 271 Bridge near Clayton	410300	PPWS	WWAC	1		•	PBCR		•		
Gates Creek	410300	PPWS	CWAC	1		•	PBCR		•		
Negro Creek	410300		HLAC	•		•	SBCR		•		
Bird Creek	410300	PPWS	WWAC	•		•	PBCR		•		
Long Creek	410300	PPWS	WWAC	•		•	PBCR		•		
North Fork	410300	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Frazier Creek	410300	PPWS	CWAC	•		•	PBCR		•		
Rock Creek	410300	PPWS	CWAC	•		•	PBCR		•		
Cedar Creek	410300	PPWS	CWAC	•			PBCR		•	HQW	
Beaver Creek	410300	PPWS	WWAC	1		•	PBCR		•		
Tennile Creek	410300	PPWS	WWAC	•		•	PBCR		•		
Buck Creek	410300	PPWS	WWAC	1		•	PBCR		•		
Clayton Lake and Watershed	410300	PPWS	WWAC	•		•	PBCR		•	SWS	
Kiamichi River upstream from U.S. Hwy 271 Bridge near Clayton	410310	PPWS	WWAC	1		•	PBCR		•		
Jackfork Creek including Sardis Reservoir	410310	PPWS	WWAC	•			PBCR		•	SWS	
Buffalo Creek	410310	PPWS	WWAC	•			PBCR		•	SWS	
Rock Creek	410310	PPWS	WWAC	•		•	PBCR		•		
Ozzie Cobb Lake and watershed	410300		WWAC	•		•	PBCR		•		NLW
Carl Albert Lake and Watershed	410310	PPWS	WWAC	•		•	PBCR		•	SWS	
Talihina Lake and Watershed	410310	PPWS	WWAC	•		•	PBCR		•	SWS	
Pigeon Creek	410310	PPWS	CWAC	1		•	PBCR		•		
Horse Creek downstream from the borders of Sections 10 & 15, T7S, R17E, IM	410400	PPWS	WWAC	1		•	PBCR		•		
Horse Creek upstream from the borders of Sections 10 & 15, T7S, R17E, IM	410400		WWAC	1		•	SBCR		•		
Tributary of Horse Creek at NE 1/4, Sec. 4, T7S, R17E, IM	410400		HLAC	•		•	SBCR		•		
Muddy Boggy Creek	410400	PPWS	WWAC	•		•	PBCR		•		
Tributary of Muddy Boggy Creek at NW 1/4, Sec. 12, T2S, R11E, IM	410400		HLAC	•			SBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Lick Creek	410400	PPWS	WWAC	•		•	PBCR		•		
Clear Boggy Creek	410400	PPWS	WWAC	•		•	PBCR		•		
Caney Creek	410400		WWAC	•		•	SBCR		•		
Delaware Creek	410400	PPWS	WWAC	•		•	PBCR		•		
Sandy Creek	410400		WWAC	•		•	PBCR		•		
Tributary of Sandy Creek at SE 1/4, Sec. 14, T2S, R8E, 1M	410400		HLAC	•		•	SBCR		•		
(Byrds) Mill Creek	410400	PPWS	WWAC	•		•	PBCR		•		
McGee Creek including McGee Creek Reservoir	410400	PPWS	WWAC	•			PBCR		•	SWS	
North Boggy Creek downstream from Atoka Reservoir	410400	PPWS	WWAC	•		•	PBCR		•		
Tributary of North Boggy Creek at NW1/4, Sec. 29, T1S, R12E, 1M	410400		HLAC	•		•	SBCR		•		
North Boggy Creek upstream from and including Atoka Reservoir	410400	PPWS	WWAC	1			PBCR		•	SWS	
Coal Creek	410400	PPWS	WWAC	•			PBCR		•		
Tributary of Brier Creek at Sec. 35, T1N, R10E, 1M	410400		HLAC	•		•	SBCR		•		
Caney Creek	410400	PPWS	WWAC	•		•	PBCR		•		
Coon Creek	410400	PPWS	WWAC	•		•	PBCR		•		
Coalgate Reservoir and Watershed	410400	PPWS	WWAC	•		•	PBCR		•	SWS	
Caney Boggy Creek	410400	PPWS	WWAC	•		•	PBCR		•		
Little Sandy Creek	410400		HLAC	•		•	SBCR		•		
Town Branch	410400		HLAC	•		•	SBCR		•		
Whitegrass Creek	410400	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Blue River downstream from the State Hwy. 48A Bridge	410600	PPWS	WWAC	1		•	PBCR		•		
Tributary of Bokchito Creek at Sec. 22, T6S, R11E, IM	410600		HLAC	•		•	SBCR		•		
Caddo Creek	410600		WWAC	•		•	PBCR		•		
Mineral Bayou	410600	EWS	WWAC	•		•	PBCR		•		
Sandy Creek	410600	PPWS	WWAC	•		•	PBCR		•		
Blue River upstream from State Hwy. 48A Bridge to State Hwy. 7 Bridge	410600	PPWS	Trout	1	•		PBCR		•	HQW	
Blue River upstream from State Hwy. 7 Bridge	410700	PPWS	CWAC	1	•	•	PBCR		•	HQW	
Red River upstream from the Blue River to Lake Texoma Dam	410700	PPWS	WWAC	•	•	•	PBCR		•		
Island Bayou	410700	EWS	WWAC	1		•	SBCR		•		
Sandy Creek	410700	PPWS	WWAC	•		•	PBCR		•		
Tributary of Sandy Creek at Sec. 20, T8S, R8E, IM	410700		HLAC	•		•	SBCR		•		

TABLE 5.  
Designated Beneficial Uses of Surface Waters  
Water Quality Management Basin 5, Canadian River

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
North Canadian River from Canadian River to S.H. 99 bridge	520500 & 520510	PPWS	WWAC	•		•	PBCR		•		
Deep Fork of Canadian River downstream from Arcadia Reservoir	520700	PPWS	WWAC	2		•	PBCR		•		
Wolf Creek downstream from Lake Henryetta	520700		WWAC	•		•	PBCR		•		
Coal Creek	520700	EWS	WWAC	•		•	SBCR		•		
Henryetta Lake and Watershed	520700	PPWS	WWAC	•		•	PBCR		•	SWS	
Moore Creek	520700		WWAC	•		•	PBCR		•		
Burgess Creek at Montezuma Creek NE 1/4, Sec. 8, T12N, R13E, IM	520700	EWS	WWAC	•		•	PBCR		•		
Cussetah Creek	520700		WWAC	•		•	PBCR		•		
Tributary of Cussetah at NE 1/4, Sec. 12, T13N, R13E, IM	520700		HLAC	•		•	SBCR		•		
Salt Creek downstream from Lake Okmulgee	520700	PPWS	WWAC	•		•	PBCR		•		
Okmulgee Lake and Watershed	520700	PPWS	WWAC	•		•	PBCR		•	SWS	
Fiat Rock Creek	520700	PPWS	WWAC	•		•	PBCR		•		
Tributary of Adams Creek at NW1/4, Sec. 5, T14N, R12E, IM	520700	EWS	WWAC	•		•	PBCR		•		
Little Deep Fork Creek downstream from Sand Creek	520700		WWAC	•		•	PBCR		•		
Little Deep Fork Creek upstream from Sand Creek to State Hwy. 48 Bridge	520700	PPWS	HLAC	•		•	SBCR		•		
Little Deep Fork Creek upstream from State Hwy. 48 Bridge	520700	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Tributary of Little Deep Fork Creek at SE 1/4, Sec. 6, T15N, R8E, IM	520700		HLAC	•		•	SBCR		•		
Nuyaka Creek	520700	PPWS	WWAC	1		•	PBCR		•		
Buckeye Creek	520700	PPWS	WWAC	1		•	PBCR		•		
Okemah Lake and Watershed	520700	PPWS	WWAC	•		•	PBCR		•	SWS	
Salt Creek	520700	PPWS	WWAC	•		•	PBCR		•		
Camp Creek downstream from Stroud Lake	520700	PPWS	WWAC	•		•	PBCR		•		
Stroud Lake and Watershed	520700	PPWS	WWAC	•		•	PBCR		•	SWS	
Gray Horse Creek	520700		HLAC	•		•	SECR		•		
Dry Creek	520700	PPWS	WWAC	•		•	PBCR		•		
West Beaver Creek	520700		WWAC	•		•	SBCR		•		
Deer Creek	520700	PPWS	WWAC	•		•	PBCR		•		
Robinson Creek	520700	PPWS	WWAC	•		•	PBCR		•		
Quapaw Creek	520700	PPWS	WWAC	•		•	PBCR		•		
Meeker Lake and Watershed	520700	PPWS	WWAC	•		•	PBCR		•	SWS	
Bellcow Creek	520700	PPWS	WWAC	•		•	PBCR		•		
Chandler Lake and Watershed	520700	PPWS	WWAC	•		•	PBCR		•	SWS	
Tributary of Bellcow Creek at Sec. 6, T15N, R8E, IM	520700		HLAC	•		•	SBCR		•		
Kickapoo Creek	520700	PPWS	WWAC	•		•	PBCR		•		
East Captain Creek	520700	PPWS	WWAC	•		•	PBCR		•		
Bear Creek	520700	PPWS	WWAC	•		•	PBCR		•		
Smith Creek	520700	PPWS	HLAC	1		•	PBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Coon Creek	520700		WWAC	1		•	PBCR		•		
Coffee Creek downstream from the boundaries of Sec. 22 & 23, T14N, R02W, IM	520710	PPWS	HLAC	1		•	PBCR		•		
Coffee Creek upstream from the boundaries of Sec. 22 & 23, T14N, R02W, IM	520710	PPWS	WWAC	1		•	PBCR		•		
Arcadia Reservoir and Watershed	520710	PPWS	WWAC	1		•	PBCR		•	SWS	
Bad Creek	520500	PPWS	WWAC	•		•	PBCR		•		
Alabama Creek	520500	PPWS	WWAC	•		•	PBCR		•		
Waleitka Lake and Watershed	520500	PPWS	WWAC	•		•	PBCR		•	SWS	
Wewoka Creek downstream from the boundaries of Secs. 27 & 28, T9N, R6E, IM	520500	EWS	HLAC	2		•	PBCR		•		
Fish Creek	520500	PPWS	WWAC	•		•	PBCR		•		
Tributary of Wewoka Creek at SE NE SW Sec. 27, T9N, R10E, IM	520500		HLAC	•		•	SBCR		•		
Graves Creek	520500	PPWS	WWAC	•		•	PBCR		•		
Little Wewoka Creek	520500	PPWS	WWAC	•		•	PBCR		•		
Tributary of Wewoka Creek at Sec. 20, T8N, R8E, IM	520500		HLAC	•		•	SBCR		•		
Wewoka Lake and Watershed	520500	PPWS	WWAC	•		•	PBCR		•	SWS	
Wewoka Creek upstream from the boundaries of Sec. 27 & 28, T9N, R6E, IM	520500	PPWS	HLAC	2		•	SBCR		•		
Tributary of Wewoka Creek at NW 1/4, Sec. 16, T9N, R5E, IM	520500		HLAC	•		•	SBCR		•		
Tributary of North Canadian River at Sec. 22, T10N, R11E, IM	520500		HLAC	•		•	SBCR		•		
Flat Rock Creek	520510	PPWS	WWAC	•		•	PBCR		•		
Sand Creek	520510		HLAC	•		•	SBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Tributary of Sand Creek at SW 1/4, Sec. 34, T11N, R8E, IM	520510		HLAC	•		•	SBCR		•		
Turkey Creek	520510	PPWS	WWAC	•		•	PBCR		•		
Tecumseh Lake and Watershed	520510	PPWS	WWAC	•		•	PBCR		•	SWS	
Shan Creek	520510		HLAC	•		•	SBCR		•		
Shawnee Twin Lakes and Watershed	520510	PPWS	WWAC	•		•	PBCR		•	SWS	
North Deer Creek	520510	PPWS	WWAC	•		•	PBCR		•		
Tributary of the North Canadian River at NE 1/4, Sec. 36, T12N, R1E, IM	520510		HLAC	•		•	SCBR		•		
Horseshoe Lake	520520		WWAC			•	PBCR		•		
North Canadian River from State Hwy. 99 Bridge to Portland Street Bridge, Oklahoma City	520510 & 520520	EWS	WWAC	•		•	PBCR		•		
Choctaw Creek	520520	EWS	HLAC	•		•	SBCR		•		
Tributary of Choctaw Creek at NW 1/4, Sec. 27, T12N, R1W, IM	520520		HLAC	•		•	PBCR		•		
Crutcho Creek from North Canadian River to S.E. 15th Street, Del City	520520		WWAC	•		•	PBCR		•		
Soldier Creek	520520		WWAC	•		•	PBCR		•		
Tributary of Soldier Creek at NW 1/4, Sec. 13, T11N, R02W, IM	520520		WWAC	•		•	SBCR		•		
Crutcho Creek upstream from S.E. 15th Street, Del City	520520		HLAC	•		•	SBCR		•		
Tributary of Crutcho Creek at SW 1/4, Sec. 16, T11N, R2W, IM	520520		WWAC	•		•	PBCR		•		
Cherry Creek	520520		HLAC	•		•	SBCR		•		
Crooked Oak Creek	520520	PPWS	WWAC	1		•	PBCR		•		
North Canadian River from Portland Street Bridge to Canton Reservoir Dam	520520 & 520530	PPWS	WWAC	•		•	PBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Mustang Creek	520520		WWAC	•		•	PBCR		•		
Shell Creek	520530	PPWS	WWAC	•		•	PBCR		•		
Purcell Creek	520530	PPWS	WWAC	•		•	PBCR		•		
Six Mile Creek	520530	PPWS	WWAC	•		•	PBCR		•		
Minnehaha Creek	520530	PPWS	WWAC	•		•	SBCR		•		
Canadian River from its confluence with Little River to Buckhead Creek	520600 & 520800	PPWS	WWAC	•		•	PBCR		•		
Little River	520800	PPWS	WWAC	1		•	PBCR		•		
Holdenville Reservoir and Watershed	520800	PPWS	WWAC	•		•	PBCR		•	SWS	
Blind Creek	520800		HLAC	•		•	SBCR		•		
Tributary of Bird Creek at NW 1/4, Sec. 6, T6N, R9E, IM	520800		WWAC	•		•	SBCR		•		
Salt Creek	520800	PPWS	WWAC	•		•	PBCR		•		
Tributary to Salt Creek at NW SW Sec. 33, T8N R5E, IM	520800		WWAC	•		•	PBCR		•		
Thunderbird Lake and Watershed	520810	PPWS	WWAC	1			PBCR		•	SWS	
Tributary of Canadian River at SE 1/4, Sec.18, T5N, R7E, IM	520600		HLAC	•		•	SBCR		•		
Jumper Creek	520600	EWS	WWAC	1		•	PBCR		•		
Canadian Sandy Creek	520600	PPWS	WWAC	1		•	PBCR		•		
Little Sandy Creek	520600	PPWS	WWAC	1		•	PBCR		•		
Spring Brook Creek	520600	PPWS	WWAC	1		•	PBCR		•		
Tributary of Cat Creek at Sec. 7, T6N, R4E, IM	520600		HLAC	•		•	SBCR		•		
Pond Creek	520600	PPWS	WWAC	•		•	PBCR		•		
Canadian River upstream from its confluence with Buckhead Creek to the US Hwy. 81 bridge	520610		HLAC	2		•	SBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Buckhead Creek	520610	PPWS	WWAC	•		•	PBCR		•		
Tributary of Canadian River at NE 1/4, Sec. 35, T6N, R1W, IM	520610		HLAC	•		•	SBCR		•		
Walnut Creek	520610		WWAC	1		•	PBCR		•		
Bridge Creek at Sec. 22, T9N, R5W, IM	520610		WWAC	•		•	PBCR		•		
Pond Creek (return flow, City of Newcastle)	520610	PPWS	WWAC	•		•	PBCR		•		
Tributary of Pond Creek at NE 1/4, Sec. 14, T9N, R4W, IM	520610		HLAC	•		•	SBCR		•		
Cow Creek	520610	PPWS	WWAC	•		•	PBCR		•		
Dry Creek	520610	PPWS	WWAC	•		•	PBCR		•		
Store Creek	520610	PPWS	WWAC	•		•	PBCR		•		
West Creek	520610		HLAC	•		•	SBCR		•		
Buggy Creek	520610	EWS	WWAC	•		•	PBCR		•		
Tributary of Canadian River at SW 1/4, Sec. 3, T10N, R7W, IM	520610		HLAC	•		•	SBCR		•		
Canadian River upstream from US Hwy. 81 bridge	520610 & 520620	EWS	WWAC	2		•	PBCR		•		
Deer Creek	520620	PPWS	WWAC	•		•	PBCR		•		
Little Deep Creek	520620		HLAC	•		•	PBCR		•		
Little Deer Creek	520620	PPWS	WWAC	•		•	PBCR		•		
Horse Creek	520620	PPWS	WWAC	•		•	PBCR		•		
Tributary of Canadian River at SE 1/4, Sec. 4, T15N, R14W, IM	520620		HLAC	•		•	SBCR		•		
Squirrel Creek	520620	PPWS	WWAC	•		•	PBCR		•		
Tributary of Squirrel Creek at SE 1/4 of NW 1/4 of SW 1/4 of Sec. 6, T9N, R4E, IM	520620		WWAC	•			PBCR		•		
Lone Creek	520620	PPWS	WWAC	•		•	PBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Trail Creek	520620	EWS	HLAC	•		•	SBCR		•		
Gyp Creek	520620	PPWS	WWAC	•		•	PBCR		•		
Red Creek	520620	PPWS	WWAC	•		•	PBCR		•		
Turkey Creek	520620	PPWS	WWAC	•		•	PBCR		•		
South Turkey Creek	520620	PPWS	WWAC	•		•	PBCR		•		
Hackberry Creek	520620	PPWS	WWAC	•		•	PBCR		•		
Mosquito Creek downstream from Sec. 31, T19N, R24W, IM	520620	PPWS	WWAC	•		•	PBCR		•		
Mosquito Creek upstream from Sec. 6, T18N, R24W, IM	520620	EWS	HLAC	•		•	SBCR		•		
Red Bluff Creek	520620	PPWS	WWAC	•		•	PBCR		•		
Commission Creek	520620	PPWS	WWAC	•		•	PBCR		•		

TABLE 6.  
Designated Beneficial Uses of Surface Waters  
Water Quality Management Basin 6, Upper Arkansas River

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Arkansas River upstream from and including Keystone Reservoir to Kaw Dam	621200	PPWS	WWAC	2		•	PBCR		•		
Cimarron River upstream from Keystone Reservoir to the Kansas State Line	620900 620910 & 620920	EWS	WWAC	3		•	PBCR		•		
Tiger Creek	620900		WWAC	•		•	PBCR		•		
Euclides Creek downstream from Sec. 5, T17N, R6E, IM	620900	EWS	WWAC	•		•	PBCR		•		
Euclides Creek upstream from Sec. 5, T17N, R6E, IM	620900	EWS	WWAC	•		•	SBCR		•		
Coltonwood Creek	620900	EWS	WWAC	•		•	PBCR		•		
Wildhorse Creek	620900	EWS	WWAC	•		•	PBCR		•		
Skull Creek	620900	EWS	WWAC	•		•	PBCR		•		
Salt Creek	620900	PPWS	WWAC	•		•	PBCR		•		
Council Creek	620900	PPWS	WWAC	•		•	PBCR		•		
Big Creek downstream from Cushing Lake	620900	PPWS	WWAC	•		•	PBCR		•		
Cushing Lake and Watershed	620900	PPWS	WWAC	•		•	PBCR		•		
Stillwater Creek downstream from Little Stillwater Creek	620900	PPWS	WWAC	•		•	PBCR		•	SWS	
Little Stillwater Creek	620900	PPWS	WWAC	•		•	PBCR		•		
Stillwater Creek from Little Stillwater Creek to Sec. 32, T19N, R3E, IM	620900	EWS	HLAC	•		•	PBCR		•		
Stillwater Creek upstream from Sec. 33, T19N, R3E to the Lake Carl Blackwell Dam	620900	EWS	HLAC	•		•	SBCR		•		
Brush Creek	620900		HLAC	•		•	SBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Boomer Creek below Boomer Lake	620900	PPWS	WWAC	•		•	PBCR		•		
Boomer Lake and Watershed	620900	PPWS	WWAC	•		•	PBCR		•	SWS	
McMurtry Lake and Watershed	620900	PPWS	WWAC	•		•	PBCR		•	SWS	
Carl Blackwell Lake and Watershed	620900	PPWS	WWAC	•		•	PBCR		•	SWS	
Sand Creek	620900		HLAC	•		•	SBCR		•		
Dugout Creek	620900	PPWS	WWAC	•		•	PBCR		•		
Fitzgerald Creek	620900	PPWS	WWAC	•		•	PBCR		•		
Langston Lake and Watershed	620900	PPWS	WWAC	•		•	PBCR		•		
Beaver Creek	620900	PPWS	WWAC	•		•	PBCR		•	SWS	
Skeleton Creek downstream from Bitter Creek	620900	PPWS	WWAC	2		•	PBCR		•		
Wolf Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Otter Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Horse Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Bitter Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Skeleton Creek from Bitter Creek to Boggy Creek	620900	EWS	HLAC	•		•	SBCR		•		
Hackberry Creek	620910	EWS	WWAC	•		•	SBCR		•		
Tributary of Skeleton Creek at Sec. 27, T22N, R5W, IM	620910		HLAC	•		•	SBCR		•		
Skeleton Creek upstream from Boggy Creek	620900	PPWS	WWAC	1		•	PBCR		•		
Tributary of Boggy Creek at NW 1/4, Sec. 14, T22N, R6W, IM	621010		HLAC	•		•	SBCR		•		
Coltonwood Creek	620910	PPWS	WWAC	2		•	PBCR		•		
Guthrie Lake and Watershed	620910	PPWS	WWAC	•		•	PBCR		•	SWS	
Liberty Lake and Watershed	620910	PPWS	WWAC	•		•	PBCR		•	SWS	

Waterbody Name and Sequence	WOM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Ass	Limitations	Remarks
Chisholm Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Deer Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Bluff Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Kingfisher Creek	620910		WWAC	•		•	PBCR		•		
Uncle John Creek	620910		WWAC	•		•	PBCR		•		
Dead Indian Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Tributary of Dead Indian Creek at NE 1/4, Sec. 19, T15N, R8W, IM	620910	EWS	HLAC	•		•	SBCR		•		
Otter Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Turkey Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Dry Salt Creek	620910		HLAC	•		•	SBCR		•		
Tributary of Dry Salt Creek at NW 1/4, Sec. 15, T21N, R8W, IM	620910		HLAC	•		•	SBCR		•		
Cooper Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Salt Creek downstream from the Blaine-Kingfisher County Line	620910	EWS	WWAC	2		•	SBCR		•		
Salt Creek upstream from the Blaine-Kingfisher County Line	620910	EWS	HLAC	2		•	SBCR		•		
Spring Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Tributary of Spring Creek at Sec. 19, T19N, R10W, IM	620910		HLAC	•		•	SBCR		•		
Tributary of Salt Creek at Sec. 11, T17N, R11W, IM	620910		HLAC	•		•	SBCR		•		
Hoyle Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Deep Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Elm Creek	620910	PPWS	WWAC	•		•	PBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Indian Creek	620910	PPWS	WWAC	•		•	PBCR		•		
Sand Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Gypsum Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Cottonwood Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Eagle Chief Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Tributary of Eagle Chief Creek at Sec. 36, T24N, R12W, IM	620920		HLC	•		•	SBCR		•		
Lake Creek	620920		WWAC	•		•	PBCR		•		
Cheyenne Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Barney Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Griever Creek	620920	PPWS	WWAC	•		•	PBCR		•		
East Griever Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Main Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Ewers Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Dog Creek	620920	EWS	WWAC	2		•	PBCR		•		
Sand Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Chimney Creek	620920	PPWS	WWAC	•		•	PBCR		•		
White Horse Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Doe Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Long Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Red Horse Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Anderson Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Traders Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Moccasin Creek	620920	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Sand Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Buffalo Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Sleeping Bear Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Sand Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Day Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Keno Creek	620920	PPWS	WWAC	•		•	PBCR		•		
Cimarron River from Kansas State Line near Englewood, Kansas to the Kansas State Line near Forgan, Oklahoma	620930	PPWS	WWAC	•		•	PBCR		•		
Snake Creek	620930	PPWS	WWAC	•		•	PBCR		•		
Redoubt Creek	620930	PPWS	WWAC	•		•	PBCR		•		
Horse Creek	620930	EWS	WWAC	•		•	SBCR		•		
Crooked Creek	620930	PPWS	WWAC	•		•	PBCR		•		
Cottonwood Creek	620930	PPWS	WWAC	•		•	PBCR		•		
Bug Creek	621200	PPWS	WWAC	•		•	PBCR		•		
Black Bear Creek	621200	PPWS	WWAC	2		•	PBCR		•		
Camp Creek	621200	PPWS	WWAC	•		•	PBCR		•		
Pawnee Lake and Watershed	621200	PPWS	WWAC	1		•	PBCR		•	SWS	
Oak Creek	621200	PPWS	WWAC	•		•	PBCR		•		
Tributary of Oak Creek at SE 1/4, Sec. 27, T21N, R3E, IM	621200		WWAC	•		•	PBCR		•		
Cow Creek downstream from Perry Lake	621200	PPWS	WWAC	•		•	PBCR		•		
Perry Lake and Watershed	621200	PPWS	WWAC	•		•	PBCR		•	SWS	
Salt Creek	621200	PPWS	WWAC	•		•	PBCR		•		
Fairfax Lake and Watershed	621200	PPWS	WWAC	•		•	PBCR		•	SWS	

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Little Chief Creek	621200	PPWS	WWAC	•		•	PBCR		•		
Phillips Lake and Watershed	621200	PPWS	WWAC	•		•	PBCR		•	SWS	
Tributary of Salt Creek at SW 1/4, Sec. 34, T27N, R6E, IM	621200		HLAC	•		•	SBCR		•		
Elm Creek	621200	PPWS	WWAC	•		•	PBCR		•		
Doga Creek	621200	PPWS	WWAC	•		•	PBCR		•		
Greasy Creek	621200		WWAC	•		•	PBCR		•		
Red Rock Creek	621200		WWAC	2		•	PBCR		•		
Tributary of Red Rock Creek at NW 1/4, Sec. 7, T23N, R2E, IM	621200		HLAC	•		•	SBCR		•		
Salt Fork of the Arkansas River	621000 621010	PPWS	WWAC	3		•	PBCR		•		
Great Salt Plains Reservoir and watershed	621010	PPWS	WWAC	3		•	PBCR		•		NLW
Bois d'Arc Creek	621000	PPWS	WWAC	1		•	PBCR		•		
Spring Creek downstream from Sec. 3, T27N, R2E, IM	621000	EWS	WWAC	1		•	PBCR		•		
Spring Creek upstream from Sec. 10, T27N, R2E, IM to Sec. 27, T28N, R2E, IM	621000	EWS	HLAC	1		•	SBCR		•		
Spring Creek upstream from Sec. 34, T28N, R2E, IM	621000	EWS	WWAC	1		•	PBCR		•		
Chikaskia River	621100	PPWS	WWAC	1		•	PBCR		•		
Duck Creek	621100	PPWS	WWAC	•		•	PBCR		•		
Slink Creek	621100	PPWS	WWAC	•		•	PBCR		•		
Bitter Creek	621100	PPWS	WWAC	•		•	PBCR		•		
Doe Creek	621100	PPWS	WWAC	•		•	PBCR		•		
Bluff Creek	621100	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Deer Creek	621000	PPWS	WWAC	•		•	PBCR		•		
Pond Creek	621000	PPWS	WWAC	•		•	PBCR		•		
Polecat Creek	621000	PPWS	WWAC	•		•	PBCR		•		
Bullwacker Creek	621000	EWS	HLAC	•		•	SBCR		•		
Osage Creek	621000	PPWS	WWAC	•		•	PBCR		•		
Crooked Creek	621000	PPWS	WWAC	•		•	PBCR		•		
Sand Creek	621000	PPWS	WWAC	•		•	PBCR		•		
Wagon Creek	621000	PPWS	WWAC	•		•	PBCR		•		
Tributary of Wagon Creek at Sec. 10, T25N, R9W, 11E	621000		HLAC	•		•	SBCR		•		
Clay Creek	621010	EWS	WWAC	•		•	PBCR		•		
East Clay Creek	621010	PPWS	WWAC	•		•	PBCR		•		
West Clay Creek	621010	PPWS	WWAC	•		•	PBCR		•		
Sandy Creek	621010	PPWS	WWAC	•		•	PBCR		•		
Little Sandy Creek	621010	PPWS	WWAC	•		•	PECR		•		
Medicine Lodge River	621010	PPWS	WWAC	•		•	PBCR		•		
Driftwood Creek	621010	PPWS	WWAC	•		•	PBCR		•		
Turkey Creek	621010	PPWS	WWAC	•		•	PBCR		•		
Greenleaf Creek	621010	PPWS	WWAC	•		•	PBCR		•		
Yellowstone Creek	621010	PPWS	WWAC	•		•	PBCR		•		
Hoover Ditch	621200		HLAC	•		•	SBCR		•		
Ponca Lake and Watershed	621200	PPWS	WWAC	•		•	PBCR		•	SWS	
Arkansas River upstream from Kaw Dam to Kansas State Line	621210	PPWS	WWAC	•		•	PBCR		•		

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Ass	Limitations	Remarks
Beaver Creek	621210	PPWS	WWAC	•		•	PBCR		•		

TABLE 7.  
Designated Beneficial Uses of Surface Waters  
Water Quality Management Basin 7, Panhandle Region

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
North Canadian River upstream from and including Canton Reservoir to Hwy 50	720500	PPWS	WWAC	3		•	PBCR		•		
Cheyenne Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Deep Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Bent Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Camp Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Kizer Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Cottonwood Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Persimmon Creek	720500	PPWS	WWAC	•		•	PBCR		•		
North Persimmon Creek	720500	PPWS	WWAC	•		•	PBCR		•		
South Persimmon Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Indian Creek	720500	PPWS	WWAC	•		•	PBCR		•		
North Canadian (Beaver) River upstream from Hwy. 50 to Lake Optima	720500		WWAC	3		•	PBCR		•		
Wolf Creek	720500	PPWS	WWAC	•		•	PBCR		•	SWS	
Fort Supply Reservoir and watershed	720500	PPWS	WWAC	•		•	PBCR		•	SWS	NLW
Sixteenmile Creek	720500	PPWS	WWAC	•		•	PBCR		•	SWS	
Little Wolf Creek	720500	PPWS	WWAC	•		•	PBCR		•	SWS	
Buzzard Creek	720500	PPWS	WWAC	•		•	PBCR		•	SWS	
Twentyfive mile Creek	720500	PPWS	WWAC	•		•	PBCR		•	SWS	
Willow Creek	720500	PPWS	WWAC	•		•	PBCR		•	SWS	
Rock Creek	720500	PPWS	WWAC	•		•	PBCR		•	SWS	

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Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Other Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Clear Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Kiowa Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Camp Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Sand Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Coon Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Mexico Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Duck Pond Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Camp Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Clear Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Cottonwood Creek	720500	PPWS	WWAC	•		•	PBCR		•		
South Fork of Clear Creek	720500	PPWS	WWAC	•		•	PBCR		•		
North Fork of Clear Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Home Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Sixmile Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Willow Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Sharp Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Jackson Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Bull Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Fulton Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Sand Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Palo Duro Creek	720500	PPWS	WWAC	•		•	PBCR		•		
Chiquita Creek	720500	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Hackberry Creek	720500	PPWS	WWAC	•		•	PBCR		•		
North Canadian (Beaver) River upstream from Lake Optima to Texas State Line	720510	PPWS	WWAC	1		•	PBCR		•		
Coldwater Creek	720510	PPWS	WWAC	•		•	PBCR		•		
Pony Creek	720510	PPWS	WWAC	•		•	PBCR		•		
Golf Creek	720510	PPWS	WWAC	•		•	PBCR		•		
Dry Sand Draw	720510										(1)
Tepee Creek	720510	PPWS	WWAC	•		•	PBCR		•		
Sand Creek	720510	PPWS	WWAC	•		•	PBCR		•		
North Canadian (Beaver) River upstream from Texas State Line to New Mexico State Line	720510	PPWS	WWAC	1		•	PBCR		•	HQW	
Cienequilla Creek from mouth to New Mexico State Line	720510	PPWS	WWAC	•		•	PBCR		•		
Cimarron River upstream from the Colorado State Line to the New Mexico State Line	720900	PPWS	WWAC	•		•	PBCR		•	HQW	
South Picket House Draw	720900	PPWS	WWAC	•		•	PBCR		•		
Cold Springs Creek	720900	PPWS	WWAC	•		•	PBCR		•		
Gallinas Cañon	720900	PPWS	WWAC	•		•	PBCR		•		
Water Canyon	720900	PPWS	WWAC	•		•	PBCR		•		
South Carrizo Creek	720900	PPWS	WWAC	•		•	PBCR		•		
Cottonwood Canyon Creek	720900	PPWS	WWAC	•		•	PBCR		•		
Tesesquite Creek	720900	PPWS	WWAC	•		•	PBCR		•		
North Carrizo Creek	720900	PPWS	WWAC	•		•	PBCR		•		
Carrizo Creek	720900	PPWS	WWAC	•		•	PBCR		•		

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## APPENDIX E. REQUIREMENTS FOR DEVELOPMENT OF SITE SPECIFIC CRITERIA FOR METALS [REVOKED]

## APPENDIX E. REQUIREMENTS FOR DEVELOPMENT OF SITE SPECIFIC CRITERIA FOR METALS [NEW]

### A. General

Numerical criteria for total recoverable metals to protect aquatic life are referenced in OAC 785:45-5-12(f)(6)(G) and Table 2 of Appendix G of this Chapter. For permitting purposes, such criteria for total recoverable Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Silver, and Zinc may be translated into dissolved metals criteria using the conversion factors referenced in OAC 785:45-5-12(f)(6)(H) and Table 3 of Appendix G.

An additional alternative which may be utilized for permitting purposes is to determine site specific criteria from either the total recoverable or the dissolved criteria. However, federal regulations found at 40 CFR 122.45(C) require that permit limits must be expressed as total metals. Therefore, if dissolved criteria are implemented, they must be translated to site specific total metals criteria to be used in the issuance of permit limits consistent with OAC 785:46.

The permitting authority may issue a total recoverable permit limit if statewide total recoverable criteria are appropriate in the permitting authority's view, and/or satisfactory in the permittee's view. If permit limits obtained using total recoverable criteria are unsatisfactory to the permittee, the permittee may attempt to obtain different permit limits by developing site specific criteria in accordance with the provisions of this Appendix.

Implementation of site specific criteria may reduce the margin of safety afforded by implementation of criteria per 785:45-5-12(f)(6)(G) and Table 2 of Appendix G. Therefore, it is important that background concentration (which reduces the assimilation capacity of receiving water) be accounted for when site specific criteria are implemented. Background concentration determination requires a minimum of twelve samples in Oklahoma.

In order to develop permissible site specific criteria for the metals specified above, this Appendix must be followed to the satisfaction of the permitting authority and the OWRB. A work plan explaining sampling and analysis procedures and quality assurance/quality control must be approved by the OWRB prior to commencing the site-specific study. Upon completion, results must be submitted to OWRB and the permitting authority. Additional technical guidance is available through Appendices J and L of the "Water Quality Standards Handbook", EPA publication no. 823-B-94-005a (August 1995). Permittees are strongly encouraged to evaluate both the discharge and receiving water using clean sampling techniques.

Upon OWRB approval, site specific criteria shall be promulgated as part of this Appendix following the next subsequent permanent rulemaking to amend OAC 785:45.

### B. Site Specific Criteria Applicability

Oklahoma's site specific criteria apply where the maximum concentration on the chronic regulatory mixing zone boundary occurs under critical conditions for small and medium size streams. Oklahoma's site specific criteria apply on the acute regulatory mixing zone boundary for large streams. Critical conditions include regulatory effluent and receiving stream flows. OAC 785:46-5-2(C) requires that effluent flow,  $Q_e$ , be the highest monthly averaged discharge if sufficient data is available, or the design flow otherwise. When chronic criteria implementation is appropriate, OAC 785:45-5-4 requires that the receiving stream flow,  $Q_r$ , be the larger of  $7Q_2$  or 1 cfs. One cfs shall be used if the  $7Q_2$  cannot be determined.

The maximum concentration on the mixing zone boundary may be simulated by mixing effluent and receiving water. Percent effluent in receiving water, PE, depends on dilution capacity and shall not exceed 100%. Dilution capacity,  $Q^*$ , =  $Q_e/Q_r$  for streams.

The following formulas shall be used to determine PE for receiving streams:  
 When chronic long term average (as provided in 785:46-5-5) is less than acute long term average (as provided in 785:46-5-6), a chronic site specific criterion may be developed.

For streams with large dilution capacities, PE equals  $(194Q^*)$  divided by  $(1 + Q^*)$ ,  $Q^* < \text{or equal to } 0.1823$ .

For streams with intermediate dilution capacities, PE equals  $(100)$  divided by  $(6.17 - 15.51Q^*)$ ,  $0.1823 < Q^* < 0.3333$ .

For streams with small dilution capacities, PE equals 100%,  $Q^* > \text{or equal to } 0.3333$ .

When an acute long term average is less than chronic, an acute site specific criterion may be developed.

PE equals  $Q_e, Q_e$  in cfs.  
 PE  $< \text{or equal to } 100\%$ .

Site specific criteria in Oklahoma lakes are also based on the maximum concentration on the mixing zone boundary. The following formulas shall be used to determine PE for lakes:

PE equals  $4.96D$ ,  $D > \text{or equal to } 3$  feet where D is pipe diameter.

PE equals  $23.8\sqrt{W}$ ,  $W > \text{or equal to } 3$  feet where W is canal width.

PE is less than or equal to 100% for streams and lakes.

If PE is less than 10%, then effluent water effect ratios shall use PE = 10%.

### C. Sampling Procedures

The permittee shall collect both receiving water and effluent, and mix them together to obtain PE. Ambient water collections shall be representative of low stream flow events and collected at a location unaffected by the discharge being permitted. Twenty-four (24) hour composite effluent samples representative of normal operation shall be collected at the outfall such that any periodic toxic discharges are captured. Outfalls may be combined proportional to flow if in close proximity. Clean sampling techniques shall be used where possible and samples shall be analyzed by an Oklahoma certified laboratory utilizing generally accepted methods. Dilution water must be made in accordance with EPA's acute biomonitoring manual entitled "Methods for Measuring the Acute Toxicity of Effluents to Aquatic Organisms", EPA publication no. 600/4-90-027 (1991). The pH, hardness, conductivity and alkalinity must be similar to that of the receiving water.

Three options are available if the permittee decides to develop site specific metals criteria for permitting purposes instead of utilizing the total recoverable criteria referenced in 785:45-5-12(f)(6)(G) and Table 2 of Appendix G.

#### 1. Option 1: Water Effects Ratio (WER)

The permittee may obtain a site specific water effects ratio (WER) to translate a state wide total criterion to a site specific total criterion if the existing permit does not contain requirements for toxicity reduction evaluations or implementation of pollution prevention efforts. Toxicity tests using both laboratory dilution water and PE water must be performed. PE water is obtained by first determining the amount of water required for the toxicity test (e.g. 1L). Since  $PE = 100V_e / (V_e + V_r)$ , where  $V_e$  and  $V_r$  are volumes of effluent and receiving water required for the toxicity test, respectively,  $V_e = PE/100$  (L). If PE = 25%,  $V_e = .25L$ . Given that  $V_e + V_r = 1$  (L) in this example,  $V_r = 1 - PE/100$ , or .75L.

Toxicity tests using two different species are required. Acute 48-hour static renewal definitive toxicity tests shall be performed by the permittee in accordance with the EPA guidance for acute testing identified above. LC50 tests shall be used to determine WER's for both acute and chronic criteria. Toxicity tests require adding metal to both PE and dilution water. It shall not be acceptable to estimate metal concentrations by measuring the amount added. Total recoverable concentrations must be used to obtain LC50's for both test species for PE and laboratory water in Option 1.

Multiple WER's must be performed. At a minimum, three tests in three different seasons must be performed for two test species. WER is computed as  $LC50_{dilution}/LC50_{PE}$ . A geometric mean of the WER's is the final water effect ratio, FWER. A minimum of four WER's must be used in the computation of FWER. An explanation of any WER's obtained but not used in computation of FWER must be provided to the permitting authority and OWRB. The total criterion specified in Table 2 of Appendix G is divided by FWER to obtain a site specific total criterion. Background concentration must be determined to use with the site specific criterion to develop permit limits.

## 2. Option 2: Dissolved To Total Fraction

Dissolved and total recoverable concentrations must be obtained to determine a dissolved to total fraction. Samples must be taken from the effluent, receiving water and PE water. The dissolved to total fraction must be successfully computed a minimum of ten times.

The dissolved to total fraction is defined as  $f_i = C_{Di}/C_{Ti}$ , where  $C_{Di}$  is the dissolved concentration in the  $i$ th PE sample, and  $C_{Ti}$  is the total recoverable concentration. The dissolved fraction for the site shall be determined as the geometric mean for the  $n$  samples.

$$\therefore f = \exp \left[ \frac{\sum_{i=1}^n [\ln(f_i)]}{n} \right]$$

To develop a site specific criterion from the dissolved fraction alone, divide the dissolved criterion determined from Table 3 of Appendix G by  $f$ . The result is a site specific total recoverable criterion.

## 3. Option 3: Combining $f$ And FWER

The most definitive method of developing a site specific criterion is to modify a dissolved criterion to account for both the fraction of the concentration biologically available and the difference between the toxicity of the metal in the laboratory dilution water and in PE water. In order to perform option 3, WER's must be obtained using dissolved concentrations. This accounts for differences between the toxicity of the dissolved metal in laboratory dilution water and dissolved metal in PE water.

A translator,  $T$ , is obtained as the product of  $f$  and dissolved FWER.  $T$  is divided into the dissolved criterion determined from Table 3 of Appendix G to obtain a site specific total recoverable criterion.

## D. Site Specific Criteria Which Have Been Developed in Particular Cases

Subsequent to the initial promulgation of this Appendix, there have been cases in which interested persons have developed site specific criteria for particular discharges or other circumstances in accordance with this Appendix. Such site specific criteria are set forth below. These site specific criteria shall be interpreted according to the following:

$C_{ast}$  = acute statewide total criterion  
 $C_{cst}$  = chronic statewide total criterion  
 $C_{asd}$  = acute statewide dissolved criterion  
 $C_{csd}$  = chronic statewide dissolved criterion  
 $S_{ast}$  = acute site specific total criterion

$S_{cst}$  = chronic site specific total criterion  
 $FWER_t$  = final total water effects ratio  
 $FWER_d$  = final dissolved water effect ratio  
 $f$  = dissolved to total fraction

Acute site specific criteria are appropriate for large streams and chronic site specific criteria are appropriate for small and medium size streams.

Options Allowed In Appendix E

Option 1  
 $S_{ast} = C_{ast}/FWER_t$   
 $S_{cst} = C_{cst}/FWER_t$

Option 2  
 $S_{ast} = C_{csd}/f$   
 $S_{cst} = C_{csd}/f$

Option 3  
 $S_{ast} = C_{csd}/(f \times FWER_d)$   
 $S_{cst} = C_{csd}/(f \times FWER_d)$

**1. City of Blackwell Discharge to Chikaskia River**

A site specific criteria modification study has been satisfactorily completed for cadmium for the City of Blackwell.

$FWER_t = 0.0989$   
 $FWER_d = 0.2905$   
 $f = 0.18$

The results of the study allow any of the four following criteria to be utilized.

$C_{cst} = 2.2 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 22.24 \mu\text{g/L}$	Option 1
$S_{cst} = 10.68 \mu\text{g/L}$	Option 2
$S_{cst} = 36.76 \mu\text{g/L}$	Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**2. AES Shady Point Discharge to Poteau River**

A site specific criteria modification study has been satisfactorily completed for copper for AES Shady Point.

$FWER_t = 0.0876$   
 $FWER_d = 0.1306$   
 $f = 0.5936$

The results of the study allow any of the four following criteria to be utilized.

$C_{cst} = 9.50 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 65 \mu\text{g/L}$	Option 1
$S_{cst} = 15.3 \mu\text{g/L}$	Option 2
$S_{cst} = 74 \mu\text{g/L}$	Option 3

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The discharger may choose the above criterion it wishes to use for discharge permit calculations.

### 3. City of Idabel Discharge to Mud Creek

#### A. Lead

A site specific criteria modification study has been satisfactorily completed for lead for the City of Idabel.

$$\begin{aligned} \text{FWER}_t &= 2.5912 \\ \text{FWER}_d &= 0.2914 \\ f &= 0.7157 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized.

$C_{\text{cst}} = 2.3492 \mu\text{g/L}$	Statewide criterion
$S_{\text{cst}} = 0.9066 \mu\text{g/L}$	Option 1
$S_{\text{cst}} = 2.7104 \mu\text{g/L}$	Option 2
$S_{\text{cst}} = 9.3036 \mu\text{g/L}$	Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

#### B. Nickel

A site specific criteria modification study has been satisfactorily completed for nickel for the City of Idabel.

$$\begin{aligned} \text{FWER}_t &= 1.1244 \\ \text{FWER}_d &= 0.9735 \\ f &= 0.5798 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized.

$C_{\text{cst}} = 128.8834 \mu\text{g/L}$	Statewide criterion
$S_{\text{cst}} = 114.6242 \mu\text{g/L}$	Option 1
$S_{\text{cst}} = 221.6226 \mu\text{g/L}$	Option 2
$S_{\text{cst}} = 227.6697 \mu\text{g/L}$	Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

#### C. Zinc

A site specific criteria modification study has been satisfactorily completed for zinc for the City of Idabel.

$$\begin{aligned} \text{FWER}_t &= 0.6714 \\ \text{FWER}_d &= 0.7178 \\ f &= 0.6213 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized.

$C_{\text{cst}} = 96.6161 \mu\text{g/L}$	Statewide criterion
$S_{\text{cst}} = 129.0082 \mu\text{g/L}$	Option 1
$S_{\text{cst}} = 137.4592 \mu\text{g/L}$	Option 2
$S_{\text{cst}} = 191.4874 \mu\text{g/L}$	Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**4. Oklahoma Gas & Electric Mustang Generating Station Discharge to North Canadian River at NE 1/4 of NE 1/4 of SE 1/4 of Section 36, T 12 N, R 5 WIM, Canadian County, Oklahoma**

A site specific criteria modification study has been satisfactorily completed for copper for the Oklahoma Gas & Electric Mustang Generating Station discharge to the North Canadian River.

$$\begin{aligned} \text{FWER}_i &= 0.053 \\ \text{FWER}_d &= 0.224 \\ f &= 0.368 \text{ (0.37)} \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 334 mg/L.

$C_{cst} = 35.9 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 677 \mu\text{g/L}$	Option 1
$S_{cst} = 94.0 \mu\text{g/L}$	Option 2
$S_{cst} = 416.0 \mu\text{g/L}$	Option 3 (Recommended in OG&E study)

$C_{ast} = 59.8 \mu\text{g/L}$	Statewide criterion
$S_{ast} = 1128 \mu\text{g/L}$	Option 1
$S_{ast} = 156.0 \mu\text{g/L}$	Option 2
$S_{ast} = 692.0 \mu\text{g/L}$	Option 3 (Recommended in OG&E study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**5. City of Poteau Discharge to Poteau River at SE 1/4 of NW 1/4 of Section 30, T 7 N, R 26 EIM, LeFlore County, Oklahoma**

**A. Copper**

A site specific criteria modification study has been satisfactorily completed for copper for the City of Poteau discharge to the Poteau River.

$$\begin{aligned} \text{FWER}_i &= 0.1850 \\ \text{FWER}_d &= 0.1765 \\ f &= 0.2969 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

$C_{cst} = 4.02 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 21.73 \mu\text{g/L}$	Option 1
$S_{cst} = 13.0 \mu\text{g/L}$	Option 2
$S_{cst} = 73.66 \mu\text{g/L}$	Option 3 (Recommended in Poteau study)

$C_{ast} = 5.35 \mu\text{g/L}$	Statewide criterion
$S_{ast} = 28.92 \mu\text{g/L}$	Option 1
$S_{ast} = 17.31 \mu\text{g/L}$	Option 2
$S_{ast} = 98.09 \mu\text{g/L}$	Option 3 (Recommended in Poteau study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**B. Zinc**

A site specific criteria modification study has been satisfactorily completed for zinc for the City of Poteau discharge to the Poteau River.

$$\text{FWER}_i = 0.4040$$

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$FWER_d = 0.4276$

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L. However, option 1 was deemed sufficient to provide relief from a zinc limit in the discharge permit.

$C_{cst} = 33.59 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 83.14 \mu\text{g/L}$	Option 1 (Recommended in Poteau study)

$C_{ast} = 37.08 \mu\text{g/L}$	Statewide criterion
$S_{ast} = 91.78 \mu\text{g/L}$	Option 1 (Recommended in Poteau study)

*[OAR Docket #03-687; filed 4-21-03]*

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

[OAR Docket #03-688]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
  - 785:46-1-1. Purpose, scope and applicability [AMENDED]
  - 785:46-1-2. Definitions [AMENDED]
  - 785:46-1-6. Determination of 7Q2 and seasonal 7Q2 [AMENDED]
- Subchapter 3. Implementation Of Narrative Toxics Criteria To Protect Aquatic Life Using Whole Effluent Toxicity (Wet) Testing
  - 785:46-3-1. Applicability and scope [AMENDED]
  - 785:46-3-2. ~~Whole~~ Dilutions for whole effluent toxicity testing [AMENDED]
  - 785:46-3-3. Sampling for whole effluent toxicity testing [AMENDED]
  - 785:46-3-4. Toxicity reduction evaluation [REVOKED]
  - 785:46-3-6. Regulatory flow determination [NEW]
- Subchapter 5. Implementation Of Numerical Criteria To Protect Fish And Wildlife From Toxicity Due To Conservative Substances
  - 785:46-5-1. Applicability and scope [AMENDED]
  - 785:46-5-2. Regulatory flow determination [AMENDED]
  - 785:46-5-3. ~~Permitting strategy to implement numerical aquatic criteria~~ Reasonable potential [AMENDED]
  - 785:46-5-4. Wasteload allocations [REVOKED]
  - 785:46-5-5. Long term average to protect against chronic toxicity [REVOKED]
  - 785:46-5-6. Long term average to protect against acute toxicity [REVOKED]
  - 785:46-5-7. Obtaining permit limits from long term averages [REVOKED]
  - 785:46-5-9. Consideration of background concentration [REVOKED]
- Subchapter 7. Implementation of Numerical Criteria to Protect Human Health from Toxicity Due to Conservative Substances
  - 785:46-7-1. Applicability and scope [AMENDED]
  - 785:46-7-2. Determination and use of regulatory flow, ~~Q<sub>w</sub>~~ [AMENDED]
  - 785:46-7-3. ~~Permitting strategy to implement numerical human health criteria~~ Reasonable potential [AMENDED]
  - 785:46-7-4. Performance of wasteload allocation; implementation into permitting [REVOKED]
- Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use
  - 785:46-9-1. Applicability and scope [AMENDED]
  - 785:46-9-4. Background concentration [REVOKED]
  - 785:46-9-5. ~~Permitting strategy to implement mineral criteria~~ Reasonable potential [AMENDED]
  - 785:46-9-6. Wasteload allocations [REVOKED]
  - 785:46-9-7. Long term average [REVOKED]
  - 785:46-9-8. Obtaining permit limits from long term averages [REVOKED]
- Subchapter 11. Implementation of Temperature Criteria to Protect Fish and Wildlife Propagation
  - 785:46-11-1. Applicability and scope [AMENDED]
  - 785:46-11-4. Permitting strategy to protect temperature criteria [REVOKED]
  - 785:46-11-7. Wasteload allocation [REVOKED]
- Subchapter 15. Use Support Assessment Protocols
  - 785:46-15-3. Data requirements [AMENDED]
  - 785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]
- Appendix A. Dilutions for Toxicity Testing [REVOKED]

**AUTHORITY:**

Oklahoma Water Resources Board; 82 O.S. 2001, § 1085.30; 27A O.S. 2001, §§ 1-1-202 and 1-3-101; and 82 O.S. 2001, § 1085.2.

**DATES:**

**Comment period:**

November 15, 2002 through January 3, 2003

**Public hearing:**

January 3, 2003

**Adoption:**

February 11, 2003

**Submitted to Governor:**

February 19, 2003

**Submitted to House:**

February 19, 2003

**Submitted to Senate:**

February 19, 2003

**Gubernatorial approval:**

March 24, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2003

**Final adoption:**

April 15, 2003

**Effective:**

July 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

The Oklahoma Water Resources Board ("OWRB") has adopted amendments to various provisions of Oklahoma Administrative Code ("OAC") 785:46 as follows:

(a) Several rules throughout OAC 785:46 have been revoked, amended or added in order to acknowledge the promulgation by the Department of Environmental Quality ("DEQ") of its own rules for implementation of the Oklahoma Water Quality Standards ("OWQS"). Several provisions of OAC 785:46 have been revoked, including OAC 785:46-3-4, 785:46-5-4 through 785:46-5-7, 785:46-5-9, 785:46-7-4, 785:46-9-4, 785:46-9-6 through 785:46-9-8, 785:46-11-4, 785:46-11-7, and 785:46 Appendix A. Other sections, including but not necessarily limited to 785:46-1-1, 785:46-1-2, 785:46-3-1 through 785:46-3-3, 785:46-5-1 through 785:46-5-3, 785:46-7-1 through 785:46-7-3, 785:46-9-1, 785:46-9-5, and 785:46-11-1 have been amended. Additionally, a new 785:46-3-6 has been adopted. The circumstance which created the need for these revocations and amendments is the enactment in 1999 of Enrolled Senate Bill No. 549 (the "Act") by the Oklahoma Legislature. The Act requires all state environmental agencies to promulgate Water Quality Standards Implementation Plans for their jurisdictional areas of environmental responsibility. In 2001, DEQ promulgated a number of new rules codified at OAC 252:690 which provide for implementation of the OWQS in a variety of subject areas within DEQ's jurisdiction. A substantial portion of the DEQ implementation rules address subjects which were already addressed in OAC 785:46 but which are now more appropriately governed by the DEQ rules in OAC 252:690. The intended effect of the OWRB's adopted rules and amendments is to avoid inconsistency with the Act and the DEQ implementation rules, while preserving the substance of general implementation rules which are appropriate for the OWRB to promulgate.

(b) OAC 785:46-15-3 has been amended to expand the test for beneficial use support regarding toxic substances by adding language regarding aquatic life. The circumstance which created the need for this amendment is that there is no rule providing a use support test addressing protection of aquatic life comparable to the existing rule addressing protection of human health. The same rule for use support regarding toxicants should apply to aquatic life as to human health. The intended effect of this amendment is to provide a use support test for protection of aquatic life and to make it the same as the test for protection of human health.

(3) OAC 785:46-15-5 has been amended to add language selecting a reference for determining fish tolerances. The circumstance which created the need for this amendment is that there are conflicting references available for determining fish tolerances which are used in determining the quality of an aquatic community. The intended effect of this amendment is to choose from these references and select one which was developed for and specific to the fish of Oklahoma.

The rules amendments adopted by the OWRB in this rulemaking implement portions of 82 O.S. 2001, §§ 1085.2 and 1085.30, and 27A O.S. 2001, §§ 1-1-202 and 1-3-101. Rules related to these rules amendments are codified in OAC Title 785, Chapter 45.

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# Permanent Final Adoptions

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:

## SUBCHAPTER 1. GENERAL PROVISIONS

### 785:46-1-1. Purpose, scope and applicability

(a) According to 82 O.S., §1085.30, the Oklahoma Water Resources Board is authorized to promulgate rules to be known as "Oklahoma Water Quality Standards" which establish classifications of uses of waters of the state, criteria to maintain and protect such classifications, and other standards or policies pertaining to the quality of such waters [82:1085.30(A)]. The "Oklahoma Water Quality Standards" are codified at OAC 785:45. Section 1085.30 of Title 82 O.S. also provides for the Oklahoma Water Resources Board to adopt and promulgate accompanying rules to implement the Oklahoma Water Quality Standards. Such implementation rules are set forth in OAC 785:46 and shall be enforced by all state agencies within the scope of their jurisdiction [82:1085.30(D)]. Implementation rules promulgated by other state environmental agencies shall not be inconsistent with the implementation rules in OAC 785:46.

(b) If ~~a permittee an affected person~~ can demonstrate to the satisfaction of the permitting authority that scientific methods, data, or implementation procedures different than those specified in this Chapter will achieve a more appropriate or representative implementation of the Standards, then the permitting authority shall use or apply such methods, data, or procedures to implement the Standards. In those circumstances where the permitting authority does not agree that the ~~permittee's affected person's~~ proposed scientific methods, data, or implementation will result in a more appropriate or representative implementation of the Standards, the ~~permittee affected person~~ may request a review of the proposed scientific methods, data, or implementation by the agency responsible for Standards implementation who shall determine its appropriateness.

(c) Implementation rules promulgated in this Chapter by the OWRB and promulgated elsewhere by other state environmental agencies with authority for implementation provide a bridge between water quality standards in OAC 785:45 and water quality management. For example, water quality standards contain numerical criteria to protect aquatic life. Permits incorporating these criteria must be issued to limit effluent concentrations so that the criteria are not violated outside the mixing zone. In this case the implementation rules describe how the criteria are translated into permit limits.

(d) Subchapters in OAC 785:46 are arranged in the sequence in which they were drafted by the Oklahoma Water Resources Board staff and adopted by the Oklahoma Water Resources Board. Following the initial promulgation of OAC 785:46, additional subchapters and implementation rules may be promulgated as the need arises.

### 785:46-1-2. Definitions

In addition to definitions of terms found in OAC 785:45-1-2, which are incorporated herein by reference, the following words, terms and notations, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

" $\sigma_y$ " means the standard deviation of flow distribution.

"7T2" means the seven-day maximum temperature likely to occur with a 50% probability each year. The 7T2 is calculated using a moving average of seven consecutive days for each year in a given record. These seven day receiving stream temperature values are ranked in descending order. An order number, m, is calculated based on the number of years of record, n, with a recurrence interval of 2 years, as  $m = (n+1)/2$ . The  $m^{\text{th}}$  highest average temperature is the 7T2.

"A" means mean annual average flow.

"ACR" means acute to chronic ratio.

"Acute to chronic ratio" means LC50/NOEC. The NOEC is the highest concentration at which no effect on test organisms is observed over a relatively long period. Quarterly biomonitoring over the life of the permit is sufficient to determine the ACR if the NOEC and LC50 may be determined. If the ACR is unknown, a default value of 10 may be used for implementation purposes.

"Background concentration" means the concentration not attributable to the effluent at the point of maximum concentration on the mixing zone boundary.

"Beneficial use limitation" means a more stringent restriction than that required to protect the beneficial use. A prohibition on new point sources is an example of a beneficial use limitation.

"Board" means Oklahoma Water Resources Board.

"BOD" means biochemical oxygen demand.

"C" means maximum concentration on the mixing zone boundary.

" $C_{95}$ " means the 95th percentile maximum likelihood concentration.

" $C_b$ " means background concentration.

" $C_e$ " means effluent concentration.

"cfs" means cubic feet per second.

" $C_{\text{mean}}$ " means the geometric mean of all effluent concentrations analyzed for the toxicant.

" $C_t$ " means the appropriate criterion listed in OAC 785:45.

"CBOD" means carbonaceous biochemical oxygen demand.

"Coefficient of variation" means standard deviation divided by the mean.

"Continuing Planning Process (CPP)" means the most recent edition of the document produced annually by the Oklahoma Department of Environmental Quality which describes water quality programs implemented within the State.

"Continuing toxicity" means a tendency to be toxic.

"Control" means test organisms exposed to 0% effluent as part of the whole effluent toxicity testing procedure.

"Cooling water reservoir" means a privately owned reservoir used in the process of cooling water for industrial purposes.

"**CPP**" means the Continuing Planning Process document.

"**CV**" means coefficient of variation.

"**D**" means diameter of the discharge pipe in feet.

"**df**" means dilution factor.

"**Dilution capacity**" means a measure of the ability of the receiving stream to dilute effluent, defined as the ratio of the regulatory effluent flow to the regulatory receiving stream flow.

"**Dilution factor**" means a measure of the minimum dilution that occurs on the mixing zone boundary.

"**Discharge to a lake**" means a discharge within the lake's normal pool elevation as listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990, excluding discharges to lock and dam reservoirs.

"**Discharge to a stream**" means (1) any discharge outside the normal pool elevation of a lake as such elevation is listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990, and (2) any discharge to a lock and dam reservoir, such as Webbers Falls Reservoir and Robert S. Kerr Reservoir.

"**DO**" means dissolved oxygen.

"**Drainage area**" means the area above the discharge drained by the receiving stream.

"**EPA**" means the United States Environmental Protection Agency.

"**HQW**" means high quality waters as defined in OAC 785:45-3-2(b).

"**Implementation Plan**" means a Water Quality Standards Implementation Plan developed and promulgated by a state environmental agency as required by 27A O.S. § 1-1-202.

"**Increased load**" means the mass of pollutant discharged which is greater than the permitted mass loadings and concentrations, as appropriate, in the discharge permit effective when the SWS, HQW, or ORW beneficial use limitation was assigned.

"**Lake mixing zone**" means a volume extending one hundred feet from the source for implementation purposes, unless otherwise specified in OAC 785:45.

"**LC50**" means the lethal concentration as defined in OAC 785:45-1-2.

~~"**LFD**" means low flow dilution.~~

"**LMFO**" means licensed managed feeding operation as defined in 2 O.S. 9-202.

~~"**Low flow dilution**" means the dilution that the effluent experiences at maximum concentration on the mixing zone boundary at low flow (7Q2 or 1 cfs).~~

"**LTA**" means long term average.

"**LTA<sub>A</sub>**" means acute long term average.

"**LTA<sub>C</sub>**" means chronic long term average.

"**LTA<sub>H</sub>**" means human health long term average.

"**MAL**" means monthly average level.

~~"**Maximum daily level**" means the concentration of a toxicant in the permit which may never be exceeded by the observed effluent concentration.~~

~~"**MDL**" means maximum daily level.~~

"**Mean annual average flow**" means the annual mean flow found in "Statistical Summaries", USGS publication no.

87-4205, or most recent version thereof, or other annual mean flow as approved by the Oklahoma Water Resources Board or the permitting authority.

"**Monthly average level**" means the concentration of a toxicant in the permit which may not be exceeded by the observed effluent concentration averaged over a calendar month.

"**NLW**" means nutrient-limited watershed as defined in OAC 785:45-1-2.

"**NOEC**" means no observed effect concentration.

"**NPDES**" means National Pollutant Discharge Elimination System.

"**Normal pool elevation**" means the elevations listed in the "Oklahoma Water Atlas", Oklahoma Water Resources Board publication no. 135, or most recent version thereof.

"**ORW**" means Outstanding Resource Waters as defined in OAC 785:45-3-2(a).

"**Outfall**" means a point source which contains all the effluent being discharged to the receiving water.

"**OWQS**" means Oklahoma Water Quality Standards.

"**Permitting authority**" means state environmental agency as defined or provided in Title 27A of the Oklahoma Statutes having jurisdiction as provided by law.

"**Persistent toxicity**" means toxicity due to effluent constituents which are not subject to decay, degradation, transformation, volatilization, hydrolysis, or photolysis.

"**Q\***" means dilution capacity.

"**Q<sub>e</sub>**" means the regulatory effluent flow.

"**Q<sub>el</sub>**" means long term average effluent flow.

"**Q<sub>es</sub>**" means short term average effluent flow.

"**Q<sub>u</sub>**" means the regulatory receiving stream flow.

"**Regulatory mixing zone**" means the volume of receiving water described in 785:45-5-26.

"**Reasonable potential factor**" means the 95th percentile maximum likelihood estimator for a lognormal distribution.

~~"**Significant non-lethal effect**" is defined as a statistically significant difference (95% confidence level) between reproduction or growth of a specific test organism in a dilution specified by the LFD and the control. Statistical analyses used shall be consistent with methods described in EPA's publication no. 600/4-89/001, "Short Term Methods For Estimating The Chronic Toxicity of Effluents and Receiving Waters To Freshwater Organisms", or most recent revision thereof.~~

"**SS**" means sample standard as defined in OAC 785:45-1-2.

"**SWS**" means Sensitive Public and Private Water Supplies.

"**T**" means maximum temperature difference at the edge of the mixing zone boundary.

"**T<sub>a</sub>**" means regulatory ambient temperature.

"**T<sub>c</sub>**" means the temperature criterion.

"**T<sub>f</sub>**" means the 95th percentile maximum observed effluent temperature.

"**TDS**" means total dissolved solids at 180°C.

"**TMDL**" means total maximum daily load.

"**Total maximum daily load**" means the sum of individual wasteload allocations for point sources, safety reserves, and loads from nonpoint source and natural backgrounds.

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**"Toxicity reduction evaluation (TRE)"** means an investigation intended to determine those actions necessary to develop water quality based effluent limits by reducing an effluent's toxicity to an acceptable level. It is a step-wise process which combines toxicity testing and analysis of the physical and chemical characteristics of a toxic effluent to identify the constituents causing effluent toxicity and/or treatment methods which will reduce the effluent toxicity.

**"Trophic State Index"** means a numerical quantification of lake productivity. The Trophic State Index shall be determined by  $TSI = 9.81 \times \ln(\text{chlorophyll-a}) + 30.6$ .

**"TSI"** means Trophic State Index.

**"TSS"** means total suspended solids.

**"USGS"** means United States Geological Survey.

**"W"** means canal width in feet.

**"Wasteload allocation"** means the effluent concentration or load of a substance or parameter which is designed to attain a criterion.

**"WET"** means whole effluent toxicity.

**"WLA"** means wasteload allocation.

**"WLA<sub>a</sub>"** means acute wasteload allocation.

**"WLA<sub>c</sub>"** means chronic wasteload allocation.

**"WLA<sub>L</sub>"** means long term average wasteload allocation.

**"WLA<sub>S</sub>"** means short term average wasteload allocation.

**"Whole effluent toxicity test"** means subjecting test organisms to an effluent, or dilutions thereof. The endpoint for test failure is lethality.

**"YMS"** means yearly mean standard as defined in OAC 785:45-1-2.

## 785:46-1-6. Determination of 7Q2 and seasonal 7Q2

### (a) General.

(1) **7Q2.** The 7Q2 is calculated as a moving average of seven consecutive days for each year in a given record. These seven-day low flow values are ranked in ascending order. An order number (m) is calculated based upon the number of years of record (n), with a recurrence interval (R) of two years, as  $m = (n+1)/R$ , where R = two years. A value of flow corresponding to the m<sup>th</sup> order is taken as the seven-day, two-year low flow for those historical data.

(2) **Seasonal 7Q2.** The seasonal 7Q2 is calculated as a moving average of seven consecutive days for the applicable dates specified in Table 1 of Appendix G of OAC 785:45 in a given period of record. These seven-day low flow values are ranked in ascending order. An order number (m) is calculated based upon the number of seasons (n) specified in Table 1 of OAC 785:45-5-12(f)(1)(C) 785:45 Appendix G during the period of record, with a recurrence interval (R) of two years, as  $m = (n+1)/R$ , where R = two years. A value of flow corresponding to the m<sup>th</sup> order is taken as the seasonal seven-day, two-year low flow for those historical data.

(b) **Primary method for determination.** If the 7Q2 or seasonal 7Q2 for a given stream or stream segment is determinable from the United States Geological Survey publications entitled "Statistical Summaries of Streamflow in Oklahoma through 1999" or "Statistical Summaries of Streamflow Records in Oklahoma and Parts of Arkansas, Kansas, Missouri and Texas

Through 1984", or the latest version of the Water Quality Management Plan published by the Department of Environmental Quality, then that 7Q2 and seasonal 7Q2 shall be conclusive except as provided otherwise in this section.

### (c) Alternative methods for determination.

(1) In lieu of determining the 7Q2 or seasonal 7Q2 as provided in (b) of this Section, the 7Q2 for a given stream or stream segment may be determined by an affected person or the permitting authority if all of the following conditions are satisfied:

(A) A hydrological modification affecting the flow in the stream is documented to the satisfaction of the Oklahoma Water Resources Board and permitting authority;

(B) At least 10 years of daily flow data comporting with the requirements of this section are available; and

(C) Data from the entire period of record for the stream, unless a different time frame of record is approved by the Board and the permitting authority, are used in the calculation.

(2) If the 7Q2 or seasonal 7Q2 for a given stream or stream segment is not determinable as provided in (b) or (c)(1) of this Section, then the 7Q2 or seasonal 7Q2 for that stream or stream segment may be determined by an affected person or the permitting authority using the calculations provided in (a) of this Section, provided at least 10 years of daily flow data are available for that stream.

(3) If the flow is affected by contributions from gauged tributaries or other permitted discharges, then the 7Q2 or seasonal 7Q2 for a given stream or stream segment may be determined taking those contributions at 7Q2 or seasonal 7Q2, or both, into account on a case-by-case basis if approved by either the Board or the permitting authority.

(4) If the 7Q2 or seasonal 7Q2 for a given stream or stream segment is not determinable as provided in (b), (c)(1), (c)(2) or (c)(3) of this Section, then the 7Q2 or seasonal 7Q2 for that stream or stream segment may be determined by an affected person or the permitting authority using an estimate based upon limited data only if both the method for estimating, and the estimate itself, are approved by both the Board and permitting authority.

### (d) Additional rules for 7Q2 and seasonal 7Q2 determinations.

(1) Any 7Q2 or seasonal 7Q2 determined with a period of record less than 20 years shall be invalid for any purpose except the issuance of the permit or establishment of the site specific criteria based upon and developed contemporaneously with such 7Q2 or seasonal 7Q2. Any subsequent renewal of such permit must be based upon a fresh determination of the 7Q2 or seasonal 7Q2 until the pertinent period of record equals or exceeds 20 years.

(2) Any subsequent renewal of a permit based upon a 7Q2 or seasonal 7Q2 determined pursuant to (c)(3) or (c)(4) of this Section must be based upon a fresh determination of the 7Q2 or seasonal 7Q2 that takes into account all discharge and flow data from the time the 7Q2 or seasonal 7Q2 was previously determined.

(3) Any subsequent renewal of a permit based upon a 7Q2 or seasonal 7Q2 determined pursuant to (c)(1) of this Section must be based upon a fresh determination of the 7Q2 or seasonal 7Q2 that takes into account whether the hydrological modification continues to exist.

**SUBCHAPTER 3. IMPLEMENTATION OF NARRATIVE TOXICS CRITERIA TO PROTECT AQUATIC LIFE USING WHOLE EFFLUENT TOXICITY (WET) TESTING**

**785:46-3-1. Applicability and scope**

- (a) The rules in this Subchapter provide a portion of the framework for implementing narrative criteria in OAC 785:45 which prohibit toxicity to aquatic life in waters of the state. This framework is based upon a testing method known as whole effluent toxicity (WET) testing. WET testing is to be used to address point source activities which have the potential for persistent effluent toxicity. The rules in this Subchapter prescribe the method for determining regulatory flow, dilutions required for WET tests, and the method for determining whether there is a reasonable potential to exceed the narrative criteria for the Fish and Wildlife Propagation beneficial use.
- (b) ~~If effluent toxicity is not persistent, increased toxicity testing to determine the source of toxicity is required.~~
- (c) If it is determined that toxicity is related to a particular chemical constituent, a numerical permit limit may be imposed for that toxicant.
- (d) Toxicity from halogens (e.g. chlorine, bromine and bromo-chloro compounds) will be controlled by dehalogenation rather than WET testing. However, use of dehalogenation shall not exempt an effluent from the WET testing requirements of this Subchapter.

**785:46-3-2. Whole Dilutions for whole effluent toxicity testing**

- (a) **General.** Generally, two whole effluent toxicity tests shall be used to implement the narrative criteria to protect fish and wildlife propagation. The 48 hour acute test will be used to protect against acute toxicity in receiving water, and the 7 or 21 day chronic test will be used to protect against chronic toxicity outside the chronic regulatory mixing zone.
- (b) **Examples of tests.** More specific tests and test organisms for determining whole effluent toxicity include:
  - (1) ~~Chronic static renewal 7 day survival and reproduction test using *Ceriodaphnia dubia* (Method 1002.0) as described in Third Edition, EPA publication no. 600/4-91-002 (July 1994), "Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", or most recent revision thereof.~~
  - (2) ~~Chronic static renewal 7 day larval survival and growth test using fathead minnow (*Pimephales promelas*) (Method 1000.0) as described in Third Edition, EPA publication no. 600/4-91-002 (July 1994), "Short Term Methods for Estimating the Chronic Toxicity of Effluents and~~

~~Receiving Waters to Freshwater Organisms", or most recent revision thereof.~~

- (3) ~~Acute 48 hour static renewal toxicity test using *Daphnia pulex* or *Ceriodaphnia dubia* as described in "Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms", Fourth Edition, EPA publication no. 600/4-90/027F (August 1993), or most recent revision thereof.~~
- (4) ~~Acute 48 hour static renewal toxicity test using *Pimephales promelas* as described in "Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms", Fourth Edition, EPA publication no. 600/4-90/027F (August 1993), or most recent revision thereof.~~
- (5) ~~Chronic 21 day test for *Daphnia magna* as described in American Society for Testing and Materials, "Standard Guidance for Conditions for the Renewal Life Cycle Toxicity Test with *Daphnia magna*", publication no. E1193, or most recent revision thereof.~~
- (6) ~~Other tests or test organisms specified by the permitting agency.~~

**(e) Differing requirements based upon dilution capacity for WET tests.**

- (1) Three different toxicity testing requirements exist. Each is based upon dilution capacity, represented by Q\*.
- (2) When Q\* is less than 0.054, acute testing only shall be required. ~~This situation reflects a large stream dilution capacity or a lake discharge.~~
- (3) When Q\* is greater than 0.33, chronic testing only shall be required. ~~This situation reflects a small dilution capacity where the effluent comprises the entire mixing zone.~~
- (4) When Q\* is greater than or equal to 0.054 and less than or equal to 0.33, both acute and chronic testing shall be required. ~~This situation reflects intermediate dilution capacities when acute to chronic ratio variability does not allow either acute or chronic testing to be run exclusively.~~
- (5) For a discharge directly to a lake, acute testing only shall be required.

**(d) Forty-eight hour acute test.**

- (1) ~~When the dilution capacity is large, the acute test will become more stringent than the chronic test and can be used alone to ensure that the prohibitions for both acute and chronic toxicity are satisfied.~~
- (2) ~~Acute screening tests are used for routine monitoring when acute testing is required. Acute screening test investigations will utilize either *C. dubia* or *D. pulex* and *P. promelas*, and contain no less than 2 replicates of 10 organisms each (20 organisms) and one control sample containing no less than 2 replicates of 10 organisms each (20 organisms). Test duration shall be 48 hours. Test validity shall be based upon greater than or equal to 90% survival in the control. If acute test failure is observed in 100% effluent, the permittee shall, within 24 hours of becoming aware, notify the permitting agency and conduct a total of two acute definitive retests within the next 60 days. If acute test failure is not observed, the permittee shall continue testing, using the acute screening test.~~

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- (3) Acute definitive retests are used to verify continuing acute toxicity following acute screening test failure. All procedures specified in 785:46-3-2(d)(2) for acute screening tests shall be employed for acute definitive retests. In addition, each acute definitive retest shall contain no less than two replicates of a 0.75 dilution series (100%, 75%, 56%, 42%, 32% and control) containing no less than 10 individuals per dilution replicate to calculate an  $LC_{50}$  value. Test validity shall be based upon greater than or equal to 90% mean survival in the controls. If lethality is confirmed by acute test failure in a retest, the permittee shall initiate a toxicity reduction evaluation (TRE). If acute test failure is not observed, the permittee shall continue testing, using the acute screening test.
- (e) **Seven or twenty-one day chronic test.**
- (1) In streams with small dilution capacities, the effluent comprises the entire mixing zone. Therefore, when  $Q^*$  is greater than 0.33, chronic testing only will prevent acute toxicity within, and chronic toxicity outside, the mixing zone.
- (2) Usually the 7 day test will be used to determine chronic test failure, and dilution and control water will be used in accordance with OAC 785:46-3-3(c). However, the 21 day test for *Daphnia magna* may be used to determine chronic test failure if the permitting agency determines that receiving stream toxicity is due solely to total dissolved solids in the *Ceriodaphnia dubia* test. In this case, *Daphnia magna* will allow use of the receiving stream for dilution and control water in the chronic toxicity test. *Daphnia magna* may not be used when the effluent TDS is greater than that of the receiving water. Chronic testing shall incorporate the 0.75 chronic Low Flow Dilution (LFD) series set forth in Appendix A of this Chapter with no less than 5 replicates of no less than 8 vertebrate organisms at each dilution and associated controls. For invertebrate organisms, the testing procedures specified in OAC 785:46-3-2(b)(1) shall be followed. Test validity shall be based upon greater than or equal to 80% mean survival in the controls. If chronic test failure is observed, the permittee shall, within 24 hours of becoming aware, notify the permitting agency. The permittee shall conduct a total of two chronic retests within 60 days following the failed test. If chronic test failure is not observed, the permittee shall continue chronic testing.
- (3) Chronic retests are used to verify continuing chronic toxicity following initial chronic test failure. All procedures specified in 785:46-3-2(e)(2) for chronic testing shall be employed for the chronic retest. If chronic test failure is confirmed by either retest the permittee will initiate a TRE. If a toxicity retest at the low flow dilution demonstrates a significant non-lethal effect the permit may be reopened to require effluent limits, additional testing and/or a TRE to address non-lethal toxic effects. If toxicity retests indicate lethality at dilution # 5 but do not indicate lethality at the LFD the permit may be reopened to require effluent limits, additional testing, and/or a TRE to address chronic toxicity outside the mixing zone. If the effluent does not demonstrate chronic toxicity at the low flow dilution, or lethality at dilution # 5 in either chronic retest, the permittee shall continue testing for the life of the permit.
- (f) **Concurrent acute and chronic testing.**
- (1) In streams with intermediate dilution capacities ( $0.054$  less than or equal to  $Q^*$  less than or equal to  $0.33$ ), acute to chronic ratio variability requires that both acute and chronic testing be conducted to prohibit acute toxicity within, and chronic toxicity outside of, the mixing zone. All individual procedures described in 785:46-3-2(d) and 785:46-3-2(e) for acute and chronic testing respectively shall be followed for concurrent acute and chronic testing.
- (2) If acute test failure is observed in 100% effluent, the permittee shall, within 24 hours of becoming aware, notify the permitting agency and conduct a total of 2 definitive retests in accordance with 785:46-3-2(d) during the next 60 days following the failed test. If acute test failure is not observed, the permittee shall continue testing, using the acute screening test. Chronic testing shall continue regardless of acute test results. The permittee shall conduct a total of two chronic retests in accordance with 785:46-3-2(e) during the next 60 days following the failed test. If chronic test failure is not observed, the permittee shall continue chronic testing.
- (3) Retests required as a result of acute test failure only are not required to include chronic retesting. Retests required as a result of chronic test failure only are not required to include the 100% effluent samples to determine 50% mortality after 48 hours. If the effluent does not demonstrate chronic toxicity at the low flow dilution, or acute test failure in 100% effluent, the permittee shall continue testing for the life of the permit. If the effluent demonstrates chronic test failure or acute test failure during retesting, the permittee shall initiate a TRE.
- (c) **Dilutions for chronic WET tests for streams.** Whole effluent chronic toxicity testing requires that test organisms be subjected to various effluent dilutions. The dilution series for chronic toxicity testing is based on the critical dilution (CD). The chronic critical dilution equations are as follows:  $CD = (1.94Q^*) / (1 + Q^*)$  when  $Q^*$  is less than or equal to 0.1823, or  $CD = 1 / (6.17 - 15.51Q^*)$  when  $Q^*$  is greater than 0.1823 and less than 0.3333, or  $CD = 1$  when  $Q^*$  is greater than or equal to 0.3333.  $Q^* = Q_g / Q_u$ .  $Q_g$  is the largest thirty day average flow for an industrial discharge, if known, and the design flow otherwise.  $Q_u$  is 1 cfs or the 7Q2 receiving stream flow, if known to be larger.
- (d) **Dilutions for acute WET tests for streams.** The acute critical dilution is 100%.

### 785:46-3-3. Sampling for whole effluent toxicity testing

- (a) Discharges with overlapping mixing zones may be combined, at the discretion of the permitting agency, and whole effluent toxicity tests may be required on the combined effluent. Samples shall be combined in proportion to the flow for each outfall. If some of the discharges are not toxic, combining discharges may allow intermittent instream toxicity if the discharge rates fluctuate. In these cases combined discharge testing will be disallowed. If the outfall originates from a

lagoon with a retention time greater than 24 hours, composite samples may not be necessary. The permitting agency may determine that a grab sample near the discharge is sufficient.

(b) The toxicity test must be initiated within 36 hours after sample collection. No sample may be held for more than 72 hours prior to use.

(c) ~~Laboratory dilution water or a grab sample shall be obtained for dilution and control water (0% effluent) to be used in the toxicity tests. The grab sample shall be uncontaminated receiving water collected upstream of and as close to the discharge point as possible. If the receiving water is unsatisfactory for dilution and control due to ambient toxicity, the permittee must substitute an appropriate dilution water, as described in "Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms", EPA Publication no. 600/4-85/013, or "Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", EPA Publication no. 600/4-89/001. The pH, hardness, conductivity and alkalinity must be similar to that of the receiving water. The permittee must report the toxicity of the upstream receiving water to the permitting agency.~~

**785:46-3-4. Toxicity reduction evaluation [REVOKED]**

(a) A toxicity reduction evaluation (TRE) is required as a result of acute or chronic retest failure (lethality). However, the permitting authority may consider the use of a toxicity identification evaluation (TIE) as a means to correct the cause of observed toxicity before the implementation of a TRE. If the results of any failed toxicity retest are due to factors outside the control of the permittee, the permitting authority may allow the permittee to resample prior to requiring a TRE. If resampling does not result in test failure, no TRE is required. The TRE is an investigation intended to determine those actions necessary to achieve compliance with water quality based effluent limits by reducing an effluent's toxicity.

(b) The permittee shall submit a TRE Action Plan to the permitting agency.

**785:46-3-6. Regulatory flow determination**

(a) The regulatory flow for a receiving stream is determined according to OAC 785:45-5-12(f)(6)(G) and 785:46-1-6.

(b) No regulatory flow determination is required for a lake.

**SUBCHAPTER 5. IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT FISH AND WILDLIFE FROM TOXICITY DUE TO CONSERVATIVE SUBSTANCES**

**785:46-5-1. Applicability and scope**

Rules in this Subchapter ~~are designed~~ prescribe the method for determining regulatory flow and the method for determining whether there is a reasonable potential to exceed the criteria, all in order to implement numerical criteria identified in OAC 785:45-5-12(f)(6)(G) and Table 2 of 785:45-

Appendix G for protection of the beneficial use of Fish and Wildlife Propagation.

**785:46-5-2. Regulatory flow determination**

(a) ~~Critical Regulatory receiving stream flow.~~ Section 785:45-5-12(f)(6)(G) of the OAC defines the critical regulatory receiving stream flow upstream of the discharge,  $Q_u$ , to be used in implementing fish and wildlife propagation criteria. The critical flow  $Q_u$  is the greater of the 7Q2 or 1 cfs. ~~The 7Q2's for some receiving streams are published in the United States Geological Survey publication entitled "Statistical Summaries Of Streamflow Records in Oklahoma and Parts of Arkansas, Kansas, Missouri and Texas Through 1984". 7Q2 shall be determined according to 785:46-1-6.~~  $Q_u$  is assumed to be 1 cfs if the 7Q2 is unknown or the permittee chooses not to develop an actual 7Q2.

(b) ~~Critical Regulatory flow for lakes.~~ The horizontal jet plume model used to determine wasteload allocations for lakes does not require a critical flow. Therefore, receiving water flow need not be determined for discharges to lakes. A discharge to a lake is defined as a discharge within the lake's normal pool elevation as listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990. Discharges to lock and dam reservoirs, such as Webbers Falls Reservoir and Robert S. Kerr Reservoir, are considered discharges to streams. No regulatory flow determination is required for lakes.

(c) ~~Critical Regulatory effluent flows.~~ The critical regulatory effluent flow,  $Q_e$ , is the highest monthly averaged flow over the past previous two years for industrial discharges with adequate if the permitting authority determines that sufficient data are available. For other dischargers (e.g. municipalities),  $Q_e$  is the design flow. If a significant daily or seasonal variability in effluent flow is present, a critical regulatory effluent flow should take this variability into account.

**785:46-5-3. Permitting strategy to implement numerical aquatic criteria Reasonable potential**

(a) ~~General.~~ When drafting NPDES permits, the permitting authority shall review the effluent data submitted by the permittee to determine which pollutants are present and regulated under the Oklahoma Water Quality Standards. The need for a permit limit will be determined, on a pollutant by pollutant basis, after utilization determination of reasonable potential, which considers assimilation capacity of the receiving water and effluent variability.

(b) **Use of reasonable potential factor; relationship with wasteload allocation process.**

(1) The technical report produced by the Oklahoma Water Resources Board entitled "The Incorporation Of Ambient Concentration With That Due To Effluent For Wasteload Allocation" shall be used to determine if there is a reasonable potential for a criterion exceedance outside the mixing zone, ~~and therefore a need for a permit limit.~~  $C_{95} = 2.13C_{mean}$  is used for effluent concentration in the reasonable potential calculation.  $C_{mean}$  is the geometric

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mean of all effluent concentrations analyzed for the toxicant. If the geometric mean cannot be determined, an arithmetic mean may be substituted. If a large dataset of effluent concentrations is available, the permitting authority may not need to estimate  $C_{95}$ ; the 95th percentile value can be calculated from the data.

(2) The wasteload allocation process is used to determine reasonable potential.  ~~$C_r$  is the maximum is the reasonable potential concentration on the chronic regulatory mixing zone boundary.~~  $C$  is calculated for chronic criteria in streams as:  $C = C_b + (1.94Q^*(C_{95} - C_b)) / (1 + Q^*)$  when  $Q^*$  is less than or equal to 0.1823, or  $C = C_b + (C_{95} - C_b) / (6.17 - 15.51Q^*)$  when  $Q^*$  is greater than 0.1823 and less than 0.3333, or  $C = C_{95}$  when  $Q^*$  is greater than or equal to 0.3333.  $Q^* = Q_e/Q_u$ .  $Q^*$  is the dilution capacity.  $C$  is calculated for lakes as: *pipe*:  $C = C_b + (D(C_{95} - C_b)) / 20.15$  when  $D$  is greater than or equal to 3 feet, or *canal*:  $C = C_b + (W^{1/2}(C_{95} - C_b)) / 4.2$  when  $W$  is greater than or equal to 3 feet.  $D$  is the diameter of the discharge pipe in feet and  $W$  is the width of the canal in feet.  $D$  and  $W$  shall not be less than three feet for implementation purposes. When  $C$  is the concentration on the acute regulatory mixing zone boundary it is calculated as  $C = C_b + (Q_e(C_{95} - C_b) / 100)$ . If  $Q_e$  is greater than 100 cfs, then 100 cfs shall be substituted for  $Q_e$ .

(3) When a chronic long term average as described in 785:46-5-5 is less than the acute long term average as described in 785:46-5-6,  $C$  is computed on the chronic regulatory mixing zone boundary and compared to chronic criteria. When an acute long term average is less than the chronic,  $C$  is computed on the acute regulatory mixing zone boundary and compared to acute criteria. For lakes,  $C$  is computed on lake mixing zone boundaries and compared to chronic criteria. When either acute or chronic criteria are not listed in OAC 785:45, the listed value shall be used.

(4) Depending on the results of the reasonable potential computations, one of the following four actions will be required:

(A) ~~**Cases where  $C$  including  $C_b$  is less than numerical criterion.** When the maximum concentration on the mixing zone boundary computed using the reasonable potential factor is less than the numerical criterion, no further action is required for the life of the permit. No additional monitoring is required and no wasteload allocation need be performed.~~

(B) ~~**Cases where  $C$  including  $C_b$  is greater than numerical criterion.** When the reasonable potential computation shows that the concentration on the mixing zone boundary exceeds the numerical criterion a wasteload allocation and a water quality based limit will be developed for the permittee and a schedule of compliance (not to exceed three years) will be incorporated into the permit. A water quality based limit may be modified upon confirmed reduction of background concentrations due to application of best management practices or other factors.~~

~~(C) **Cases where  $C$  is greater than numerical criterion when  $C_b$  unknown.** When a reasonable potential computation shows that the effluent alone (substitute 0 for  $C_b$  in the equations set forth in OAC Section 785:46-5-3(b)(2)) may cause the maximum concentration on the mixing zone boundary to exceed the numerical criterion, a wasteload allocation will be performed by the permitting authority. Receiving stream monitoring and reporting of the limited pollutant will be required to establish background pollutant contributions in order to reevaluate the limits. An NPDES permit limit, with compliance schedule, will be established by the permitting authority.~~

(D) ~~**Cases where  $C$  is less than numerical criterion when  $C_b$  unknown.** In those cases where the background concentration is unknown and the maximum concentration on the mixing zone boundary due to the effluent is less than the criterion, the long term average effluent concentration shall be compared to the most stringent long term average associated with the applicable criteria (calculated as provided in OAC 785:46-5-5, 785:46-5-6 and 785:46-7-4(d)). If the effluent LTA is less than the most stringent criteria LTA, then background concentration monitoring shall not be required; otherwise, background monitoring shall be required.~~

(5) For regulatory purposes, there is a reasonable potential for chronic toxicity if concentrations of ammonia outside the chronic regulatory mixing zone exceed 6 mg/L.

### 785:46-5-4. Wasteload allocations [REVOKED]

(a) ~~**General.** Wasteload allocations are developed to insure that Oklahoma's numerical criteria are not exceeded outside the mixing zones. Numerical criteria implementation requires a criterion,  $C_t$ , listed in the table in OAC 785:45-5-12(f)(6)(G). Wasteload allocations must be calculated for both acute and chronic criteria, if available, if OAC 785:46-5-3(b)(4) indicates there is a reasonable potential for a criterion exceedance. Because mixing zones for lakes are different from those for streams, wasteload allocations are determined in a different manner for lakes than for streams.~~

(b) ~~**Chronic wasteload allocation for streams.** The following formulas from the technical report produced by the Oklahoma Water Resources Board entitled "The Incorporation Of Ambient Concentration With That Due To Effluent For Wasteload Allocation" shall be utilized:~~

$$WLA_e = C_b + ((1 + Q^*)(C_t - C_b)) / (1.94Q^*)$$

when  $Q^*$  is less than or equal to 0.1823, or

$$WLA_e = C_b + (6.17 - 15.51Q^*)(C_t - C_b)$$

when  $Q^*$  is greater than 0.1823 and less than 0.3333, or

$$WLA_e = C_t$$

when  $Q^*$  is greater than or equal to 0.3333. If  $C_b > C_c$ , an investigation of sources of upstream toxicity should be conducted. For implementation purposes,  $C_b = C_c$  in this case, which results in a wasteload allocation equal to the criterion.

(c) **Acute wasteload allocation for streams.** The following formula shall be utilized to determine acute wasteload allocations in streams:

$$WLA_s = C_b + 100(C_c - C_b)/Q_c$$

If  $C_b > C_c$ , set  $C_c = C_b$ .

(d) **Wasteload allocation for lakes.** The regulatory mixing zone in lakes is defined to extend 100 feet from the source for implementation purposes. The following formula shall be utilized:

pipe: 
$$WLA = C_b + (20.15(C_c - C_b))/D$$

when D is greater than or equal to 3 feet, or

canal: 
$$WLA = C_b + (4.2(C_c - C_b))/(W^{1/2})$$

when W is greater than or equal to 3 feet. If  $C_b > C_c$ , then the lake is considered toxic and an investigation of toxicity sources should be conducted. For implementation purposes,  $C_b = C_c$  in this case, which results in a wasteload allocation equal to the criterion.

**785:46-5-5. Long term average to protect against chronic toxicity [REVOKED]**

The chronic long term average ( $LTA_c$ ) must be obtained from  $WLA_c$ , the chronic wasteload allocation, in order to determine which criterion implementation will be used for permit development. The long term average concentration for chronic toxicity is determined using the 99% probability basis. In accordance with EPA guidance,

$$LTA_c = WLA_c \exp(0.5 \cdot \frac{2}{4} - 2.326 \cdot \frac{2}{4}),$$

where  $\frac{2}{4} = \ln[(CV^2/4) + 1]$ .

CV is the coefficient of variation for the effluent concentration distribution. If effluent data is not sufficient to compute the coefficient of variation, CV = 0.6 shall be used. In this case,

$$LTA_c = 0.5274 WLA_c$$

**785:46-5-6. Long term average to protect against acute toxicity [REVOKED]**

The acute long term average,  $LTA_a$ , must be obtained from the acute wasteload allocation,  $WLA_a$ , to compare to other long term averages. Using the 99% probability basis in accordance with EPA guidance,

$$LTA_a = WLA_a \exp(0.5 \cdot \frac{2}{2} - 2.326 \cdot \frac{2}{2})$$

where  $\frac{2}{2} = \ln(CV^2 + 1)$ .

If effluent data is not sufficient to compute the coefficient of variation, CV = 0.6 shall be used. In this case,

$$LTA_a = 0.3211 WLA_a$$

**785:46-5-7. Obtaining permit limits from long term averages [REVOKED]**

Daily maximum and monthly average permit limits are required by EPA regulation. The maximum daily level (MDL) and the monthly average level (MAL) will be obtained from the long term average (LTA) using the method described in the CPP. The LTA is the smallest of the long term averages for the acute criterion, the chronic criterion, the human health criterion and other long term averages. Load, as well as concentration, must be expressed in the NPDES permit.

**785:46-5-9. Consideration of background concentration [REVOKED]**

(a) Background concentration,  $C_b$ , is caused by sources upstream of the permitted discharge. These sources may be either point or nonpoint. Nonpoint sources may be either natural or anthropogenic. Background concentration must be accounted for in the wasteload allocation because the assimilation capacity of the receiving stream decreases as the background concentration increases. The permitting agency shall determine which constituents must be monitored near a particular point source.

(b) Data to determine background concentration may be available from STORET or other data bases with adequate and documentable quality assurance procedures which are acceptable to the permitting authority. If sufficient data is not available, the receiving water shall be monitored to determine the background concentration. Samples will be collected at a location that is representative of the receiving water and unaffected by the discharge being permitted. In lakes, samples shall be collected at a point outside the regulatory mixing zone, which extends 100 feet in any direction from the source. Samples shall be collected as close to low flow conditions as possible in streams. The geometric mean of at least twelve concentration observations is required to determine the background concentration. Hardness/pH must be obtained along with  $C_b$  if the criterion is hardness/pH dependent.

(c) Until twelve appropriate concentrations are available,  $C_b$  shall be assumed zero. Background concentration shall also be assumed zero for small streams with no ambient monitoring required, unless upstream sources of toxicity are known. Therefore, if  $Q_c = 1$  cfs, then  $C_b = 0.0$ , absent of known upstream sources.  $C_b$  shall also be assumed zero for discharges of "once through cooling water". However, these dischargers will be required to monitor both influent and effluent, as specified by the permitting authority.

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### SUBCHAPTER 7. IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT HUMAN HEALTH FROM TOXICITY DUE TO CONSERVATIVE SUBSTANCES

#### 785:46-7-1. Applicability and scope

(a) **General.** Rules in this Subchapter prescribe the method for determining regulatory flow and to determine whether there is a reasonable potential to exceed the criteria, all in order to implement numerical criteria to protect human health for consumption of fish flesh and/or water.

(b) **Applicable public and private water supply criteria.** Applicable criteria for waters designated Public and Private Water Supplies are found in OAC 785:45-5-10(1) and OAC 785:45-5-10(6).

(c) **Applicable fish consumption criteria.** Applicable criteria for waters designated Warm Water Aquatic Community and/or Cool Water Aquatic Community and/or Trout Fisheries are found in 785:45-5-20.

(d) **Appropriate criterion.** If several criteria apply to human health implementation, the most stringent is used for implementation purposes.

(e) **Applicable receiving waters.** The human health criteria apply in receiving waters designated as Public and Private Water Supplies and certain designated sub-categories of Fish and Wildlife Propagation. Some streams in Appendix A of OAC 785:45 are designated Habitat Limited Aquatic Communities, and are not designated for the Public and Private Water Supply beneficial use. Therefore, human health criteria do not apply to these streams. For implementation purposes these streams are considered conduits to the downstream water body. Human health criteria must be implemented on the first downstream water body to which they apply.

#### 785:46-7-2. Determination and use of regulatory flow, $Q_u$

(a) **General.** OAC 785:45-5-10(1), 785:45-5-10(6)(B) and 785:45-5-20(b) require that long term average receiving stream flows shall be used to implement water column numerical criteria to protect human health.

(b) **Long term average flow on gaged receiving streams.** Mean annual average flow as determined in the technical report produced by the Oklahoma Water Resources Board entitled "Estimation Of Mean Annual Average Flows" shall be used for long term average flow in receiving streams which are or have been measured by USGS gages.

(c) **Mean annual average flows on ungaged receiving streams.** Mean annual average flow may be estimated on streams where flow is not routinely measured. This method for estimation is demonstrated in the technical report produced by the Oklahoma Water Resources Board entitled "Estimation Of Mean Annual Average Flows". Other scientifically defensible methods of long term average flow estimation are permissible if approved by the permitting authority.

(d) **Long term average flow in lakes.**  $Q_u$  cannot be estimated in a lake as easily as it can be for a stream. Therefore,

mean annual average discharge from the lake shall be used for  $Q_u$ .

(e) **Long term effluent flow.** The regulatory effluent flow,  $Q_e$ , is long term average effluent flow over the previous two years for industrial discharges if the permitting authority determines that sufficient data are available. For other discharges,  $Q_e$  is the design flow.

#### 785:46-7-3. ~~Permitting strategy to implement numerical human health criteria~~ **Reasonable potential**

(a) **General.** Complete mixing of effluent and receiving water shall be used to determine appropriate permit limits. A mass balance model shall be used for implementation purposes.

(b) **Use Determination of reasonable potential factor; relationship with wasteload allocation process.**

(1) ~~When drafting NPDES permits, the permitting authority will review effluent data and identify those pollutants found in the effluent which are regulated under the OWQS. The permitting authority will determine the need for a permit limit through utilization of the reasonable potential test.~~

(2) The mass balance equation will be used in the determination of human health reasonable potential:  $C = (C_e Q^* + C_b) / (Q^* + 1)$ .  $Q^* = Q_e / Q_u$ , where  $Q_e$  is the regulatory effluent flow.  $C$  must be considered a long term average concentration after complete mixing.  $C_b$  is the background concentration. To determine if there is a reasonable potential to exceed the criterion after complete mixing, choose  $C_e = 2.13C_{\text{mean}}$ , where  $C_{\text{mean}}$  is a geometric mean of all effluent concentrations analyzed for the toxicant. If the geometric mean cannot be determined, an arithmetic mean may be used instead.

(3) Representative background concentrations will be used if available. Such representative data should reflect long term average pollutant concentrations for implementation purposes. Otherwise,  $C_b$  is assumed zero.

(4)  $C$  must be compared with the applicable water quality criterion to determine if there is a reasonable potential for the pollutant discharge to cause a criterion exceedance. If concentration after complete mixing is greater than the human health criterion, a permit limit will be required.

#### 785:46-7-4. Performance of wasteload allocation; implementation into permitting **[REVOKED]**

~~(a) **General.** When a reasonable potential computation shows that the effluent may cause the concentration after complete mixing to exceed the numerical criterion, a wasteload allocation will be performed. In those cases where the background concentration is unknown, the long term average effluent concentration shall be compared to the most stringent long term average associated with the applicable criteria (calculated as provided in OAC 785:46-5-5, 785:46-5-6 and 785:46-7-4(d)). If the effluent LTA is less than the most stringent criteria LTA, then background concentration monitoring~~

shall not be required; otherwise, background monitoring shall be required.

**(b) ~~Wasteload allocation to protect human health in streams.~~**

~~(1) For implementation purposes, the receiving water is considered a stream in all cases except when it is within a lake's normal pool elevation as listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990. The human health mass balance wasteload allocation is written:~~

$$WLA = C - ((C - C_b) / Q_e)$$

~~where C becomes the appropriate human health criterion. For implementation purposes, Q<sub>e</sub> is the mean annual average flow over the preceding two years for industrial discharges with adequate data. For other dischargers (e.g. municipalities), Q<sub>e</sub> is the design flow.~~

~~(2) For wasteload allocation purposes, it is assumed that C<sub>b</sub> < C.~~

~~(3) Representative background concentrations will be used if available, but assumed zero otherwise. Representative data is assumed to be an estimator of long term average pollutant concentrations for implementation purposes.~~

~~(4) No discharge to a stream in excess of any human health criterion shall be allowed for 5 miles upstream of a public water supply intake. A complete mix of the effluent and the receiving water is required to insure that criteria are not exceeded at the point of intake.~~

**(c) ~~Wasteload allocations to protect human health in lakes.~~** A mass balance must be assumed for discharges within the normal pool elevation of lakes. ~~The equation in 785:46-7-4(b) is applicable in such cases. Inflow concentration may not be representative of background concentration in a lake. Ambient monitoring, stipulated by a permit requirement to characterize background concentrations, will be collected within the normal pool elevation of the lake at a point unaffected by the discharge. No discharge within the normal pool elevation of a lake, in excess of any human health criterion, shall be allowed within one mile of a public water supply intake.~~

**(d) ~~Wasteload allocation and long term average.~~** Since the wasteload allocation for human health is a long term average,

$$LTA_H = WLA,$$

where LTA<sub>H</sub> is the human health long term average.

**(e) ~~Obtaining permit limits from long term averages.~~** An NPDES permit limit will be established by the permitting authority, with compliance schedule if necessary. Permit limits will be obtained from the long term average (LTA) using methods outlined in the CPP. The LTA is the smallest of the long term averages for the acute criterion, the chronic criterion, the human health criterion and other long term averages.

**SUBCHAPTER 9. IMPLEMENTATION OF CRITERIA TO PROTECT THE AGRICULTURE BENEFICIAL USE**

**785:46-9-1. Applicability and scope**

Rules in this Subchapter are designed to implement prescribe the method for determining whether there is a reasonable potential to exceed the criteria identified in OAC 785:45-5-13(h) and OAC 785:45 Appendix F for protection of the beneficial use of Agriculture. Included are criteria for chlorides, sulfates and total dissolved solids.

**785:46-9-4. Background concentration [REVOKED]**

~~Background concentration must be obtained for wasteload allocation purposes. OAC 785:45 Appendix F may be used to determine background concentration. The definitions of both yearly mean standard, YMS, and sample standard, SS, must be used to obtain~~

$$BC = 2YMS - SS.$$

**785:46-9-5. Permitting strategy to implement mineral criteria Reasonable potential**

**(a) General.** The need for a permit limit will be determined on a mineral constituent basis, after application of the reasonable potential equation specified in (b) of this Section, which considers assimilation capacity of the receiving water and effluent variability.

**(b) Reasonable potential equation.** OAC 785:45-5-13(d) requires that complete mixing of effluent and receiving water be taken into account in the reasonable potential equation. The use of mass balance to obtain wasteload allocations for complete mixing is codified at OAC 785:46-7-3(a). Therefore, the reasonable potential equation for mineral constituents is  $C = (Q_u BC + Q_e C_{95}) / (Q_u + Q_e)$ , where  $C_{95} = 2.13 C_{mean}$ , where  $C_{mean}$  is the geometric mean of all effluent concentrations analyzed for the mineral. If the geometric mean cannot be determined, an arithmetic mean may be used. If sufficient effluent concentration observations exist as determined by the permitting authority, then the permitting authority may compute the 95th percentile concentration and use it as  $C_{95}$ , in accordance with OAC 785:46-5-3(b)(1).

**(c) Reasonable potential to exceed yearly mean standard.**  $Q_u = A$  and  $Q_e = Q_{el}$  in OAC 785:46-9-5(b) to obtain a long term average concentration after complete mixing. If C is greater than YMS there is a reasonable potential to exceed an Agriculture beneficial use criterion, so a permit limit is required.

**(d) Reasonable potential to exceed sample standard.**  $Q_u = 0.68A$  and  $Q_e = Q_{es}$  in OAC 785:46-9-5(b) to obtain a short term average concentration after complete mixing. If C is greater than SS there is a reasonable potential to exceed an Agriculture beneficial use criterion, so a permit limit is required.

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## 785:46-9-6. Wasteload allocations [REVOKED]

(a) **General.** Permit limits to implement the Agriculture beneficial use are obtained through wasteload allocations. Wasteload allocations are calculated for both sample standards and yearly mean standards to insure that mineral criteria are not exceeded after complete mixing.

(b) **Wasteload allocation for YMS.** Since the yearly mean standard is a long term average,  $Q_{ei}$  and  $A$  are used in the mass balance equation to obtain a long term wasteload allocation,  $WLA_{Lr}$ .

$$WLA_{Lr} = (YMS(A + Q_{ei}) - A(BC)) / Q_{ei}$$

(c) **Wasteload allocation for SS.** Since the sample standard is a short term average,  $Q_{es}$  and  $0.68A$  are used in the mass balance equation to obtain a short term wasteload allocation,  $WLA_{Sr}$ .

$$WLA_{Sr} = (SS(0.68A + Q_{es}) - 0.68A(BC)) / Q_{es}$$

## 785:46-9-7. Long term average [REVOKED]

(a) **General.**  $WLA_{Sr}$  must be converted to a long term average for comparison with  $WLA_{Lr}$ .

(b) **Long term average for  $WLA_{Sr}$ .** The long term average for  $WLA_{Sr}$ ,  $LTA_{Sr}$ , may be determined using EPA's method with a 99% probability basis. If available effluent data is not sufficient to compute the coefficient of variation it shall be set equal to 0.6. In this case,

$$LTA_{Sr} = 0.52/4WLA_{Sr}$$

(c) **Long term average for permit development.** The smaller of  $LTA_{Sr}$  and  $WLA_{Lr}$  shall be used for permit development, provided that it is not less than a minimum criterion found in 785:45-5-13(h). The minimum criteria are 700 mg/L for TDS and 250 mg/L for chlorides and sulfates. They represent the lowest concentrations that may be used for long term average.

## 785:46-9-8. Obtaining permit limits from long term averages [REVOKED]

(a) **General.** EPA regulation requires that maximum daily limits and average monthly limits be obtained from a long term average.

(b) **Loads.** Loads, as well as concentrations, must be expressed in the permit in order to implement mineral criteria.

## 785:46-11-1. Applicability and scope

(a) OAC 785:45-5-12(f)(2) provides that at no time shall heat be added in excess of the amount that will raise receiving water temperature more than 2.8 °C outside the mixing zone. Therefore, the wasteload allocation for temperature criterion will be implemented with respect to regulatory flow and reasonable potential at the maximum temperature on the edge of the mixing zone.

(b) OAC 785:45-5-26 provides generally to the effect that in streams the mixing zone encompasses 25% of the total flow. The mixing zone in lakes may be designated by the permitting authority on a case by case basis. To be consistent, the mixing zone used for numerical criteria implementation to protect fish and wildlife propagation from toxicity will be employed for temperature implementation in lakes. This mixing zone is defined to extend 100 feet into the lake from the source.

(c) Temperature implementation does not apply to privately owned cooling water reservoirs. Such reservoirs are specifically exempted in OAC 785:45-5-12(f)(2)(F) from implementation of temperature criteria to protect aquatic life. However, implementation of the antidegradation policy includes a maximum temperature (52°C) which applies to all waters of the state including privately owned cooling water reservoirs. Privately owned cooling water reservoirs, however, that demonstrate no reasonable potential to exceed the antidegradation temperature shall not be limited in permits by such temperature.

(d) All calculations to implement temperature criteria shall be done in °C at critical temperature conditions.

## 785:46-11-4. Permitting strategy to protect temperature criteria [REVOKED]

(a) The permitting authority shall use a reasonable potential assessment to determine if the heated effluent will raise the temperature of the receiving water more than 2.8°C outside the mixing zone.

(b) If the maximum temperature difference at the edge of the mixing zone boundary,  $T'$ , is greater than 2.8°C, then the permitting authority shall compute the wasteload allocation.

(c) For temperature implementation, the wasteload allocation shall be considered a weekly long term average temperature using a 50% probability basis.

## 785:46-11-7. Wasteload allocation [REVOKED]

(a) Conservative substance models will be used for wasteload allocations to implement temperature criteria.

$$WLA = T_{*} + df(T_e - T_{*}),$$

where  $df$  is the dilution factor and  $T_e - T_{*} = 2.8^{\circ}\text{C}$ .

$$? WLA = T_{*} + 2.8df.$$

(b) Substituting the appropriate dilution factors for discharges to streams,

## SUBCHAPTER 11. IMPLEMENTATION OF TEMPERATURE CRITERIA TO PROTECT FISH AND WILDLIFE PROPAGATION

$$WLA = T_a + 1.44(1 + Q^*) / Q^*$$

when  $Q^*$  is less than or equal to 0.1823, or

$$WLA = T_a + 17.276 - 43.428Q^*$$

when  $Q^*$  is greater than 0.1823 and less than 0.3333, or

$$WLA = T_a + 2.8$$

when  $Q^*$  is greater than or equal to 0.3333.

~~(e) Substituting the appropriate dilution factors for discharges to lakes;~~

pipe: 
$$WLA = T_a + 56.42 / D$$

when  $D$  is greater than or equal to 3 feet, or

canal: 
$$WLA = T_a + 11.76 / W^{+2}$$

when  $W$  is greater than or equal to 3 feet.

## SUBCHAPTER 15. USE SUPPORT ASSESSMENT PROTOCOLS

### 785:46-15-3. Data requirements

(a) **General.** In order to determine whether a given beneficial use of a waterbody is supported, scientific data from the waterbody shall be used as prescribed in this Section. Data shall be collected and analyzed in a manner consistent with testing procedures provided in 785:45-1-4 or other widely-accepted and peer-reviewed methods. All existing data available for a waterbody shall be used in the analysis, subject to the spatial, temporal and other requirements of this Section.

(b) **Spatial coverage.**

(1) **General for streams.** The spatial extent of assessment of use support in terms of stream miles shall be determined after taking into account existing data, spatial distribution of monitoring sites, sources of pollution and influence of tributaries. Major hydrological features, such as the confluence of a major tributary or a dam, may limit the spatial extent of an assessment based on one station.

(2) **Non-wadable streams.** Unless it is demonstrated to the contrary, a single monitoring site shall be considered representative of no more than 25 stream miles for non-wadable streams.

(3) **Wadable streams.** Unless it is demonstrated to the contrary, a single monitoring site shall be considered representative of no more than 10 stream miles for wadable streams.

(4) **Lakes.** The spatial extent of assessment of use support in terms of lake surface acres shall be estimated based on the spatial distribution of monitoring sites having the requisite number of samples, sources of pollution, influence of tributaries and best professional judgment. Arms or portions of lake may be treated separately from the main body of a lake. Unless it is demonstrated to the

contrary, a single site shall be considered representative of an entire lake or an arm of no more than two hundred and fifty surface acres in size.

(5) **Spatial limitation for sampling sites.** For purposes of this Subchapter, samples shall not be taken within any regulatory mixing zone.

(c) **Temporal coverage.**

(1) **General.** Samples collected for purposes of assessing use support shall be taken to avoid temporal bias, and seasonality shall be represented in the sampling scheme.

(2) **Streams.** Except for circumstances in which 785:46-15-4(b)(3) or 785:46-15-4(c)(3) applies, data more than five years old shall not be utilized in assessing use support for a stream unless no data exists for the preceding five year period.

(3) **Lakes.** Except for circumstances in which 785:46-15-4(b)(3) or 785:46-15-4(c)(3) applies, data more than ten years old shall not be utilized in assessing use support for a lake unless no data exists for the preceding ten year period.

(d) **Minimum number of samples.**

(1) **Streams.** Except when (f) of this Section applies, a minimum of 10 samples shall be required to assess beneficial use support due to field parameters including but not limited to DO, pH and temperature, and due to routine water quality constituents including but not limited to coliform bacteria, dissolved solids and salts. Analyses may be aggregated to meet the 10 sample minimum requirements in non-wadable stream reaches that are 25 miles or less in length, and in wadable stream reaches that are 10 miles or less in length, if water quality conditions are similar at all sites. Provided, a minimum of 10 samples shall not be necessary if the existing samples already assure exceedance of the applicable percentage of a prescribed screening level.

(2) **Lakes.** Except when (f) of this Section applies, a minimum of 20 samples shall be required on lakes of more than 250 surface acres to assess beneficial use support due to water quality parameters including but not limited to DO, pH and temperature. A minimum of 20 samples shall likewise be required on such lakes for other routine water quality constituents including but not limited to coliform bacteria, chlorophyll a, and dissolved solids. A minimum of 10 samples shall be required on lakes or arms of 250 surface acres or less. Samples may be aggregated to meet the minimum requirements of this paragraph.

(3) **Toxicants.** Notwithstanding any other provision of this Subchapter, a minimum of five samples shall be required to determine that a beneficial use is supported with respect to all toxicants in water. A determination that a beneficial use is partially supported or not supported with respect to toxicants may be made upon less than five samples. Samples may be aggregated consistent with the spatial and temporal requirements prescribed in (b) and (c) of this Section in order to satisfy the minimum sample requirement of this paragraph. Additional samples for the calculation of pH and hardness dependent acute and

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chronic criteria shall be collected as required by OAC 785:46-5-8.

(e) **Application of PQL.**

(1) **Criteria above PQL.**

(A) If sample values are below the PQL for a parameter whose criterion is above the PQL, appropriate nonparametric statistical measures shall be used to determine the reporting value.

(B) For waterbodies identified as impaired on the current 303(d) List or 305(b) Report, if sample values are nondetectable for a parameter whose criterion is above the PQL, then such value shall be deemed to be one-half (1/2) of the parameter PQL.

(C) All sample values that are above the PQL shall be the reported values.

(2) **Criteria below PQL.**

(A) If sample values are below the PQL for a criterion which is less than one-half (1/2) of the PQL, then the values shall be deemed to be zero (0) until the first test result above the PQL appears. After that time, sample values which are below the PQL shall be deemed to be equal to the criterion value until four (4) subsequent contiguous samples are shown to be below the PQL. Any subsequent sample values which are nondetectable may be treated as zero (0) until the next test result appears above the PQL.

(B) For those parameters whose criteria are at least two (2) orders of magnitude below the PQL, evidence considered with respect to assessment of use support shall include fish tissue analysis, biological community analysis, biological thresholds wherever available, or other holistic indicators which are appropriate for the beneficial use in question.

(C) If sample values are below the PQL for a criterion which is greater than or equal to one-half (1/2) of the PQL but less than the PQL, then the values shall be deemed to be one-half (1/2) of the criterion value until the first test result above the PQL appears. After that time, sample values which are below the PQL shall be deemed to be equal to the criterion value until four (4) subsequent contiguous samples are shown to be below the PQL. Any subsequent sample values which are nondetectable may be treated as equal to one-half (1/2) of the criterion value until the next test result appears above the PQL.

(D) For waterbodies identified as impaired on the current 303(d) List or 305(b) Report, if sample values are nondetectable for a parameter whose criterion is below the PQL, then such value shall be deemed to be one-half (1/2) of the criterion value.

(E) All sample values that are above the PQL shall be the reported values.

(f) **Magnitude of criteria exceedance.**

(1) **General.** The magnitude of exceedance, as well as frequency of exceedances, shall be used in determining beneficial use support. Samples shall be taken only during conditions when criteria apply.

(2) **Toxicants.** If two or more concentrations of toxicants exceed criteria or screening levels to protect human health or aquatic life by two orders of magnitude or more, the associated beneficial use shall be deemed to be not supported.

(3) **Dissolved oxygen.** If more than two concentrations of DO in a stream are observed to be below 2 mg/L in any given year, the Fish and Wildlife Propagation beneficial use shall be deemed to be not supported.

(4) **Other parameters.** The magnitude and frequency of exceedances to be used for determining beneficial use support for parameters other than toxicants and DO shall be as prescribed in the rules elsewhere in this Subchapter.

(g) **Quality assurance.** On and after July 1, 2002, data collected for purposes of use support assessment shall be collected using documented programmatic quality assurance and quality control methods substantially in accordance with those required by "EPA Requirements for Quality Assurance Project Plans", EPA publication no. EPA/240/B-01/003 (March 2001). The methods used shall include protections for sample integrity and the documentation of details on analysis methodologies.

### 785:46-15-5. Assessment of Fish and Wildlife Propagation support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Fish and Wildlife Propagation or any subcategory thereof designated in OAC 785:45 for a waterbody is supported.

(b) **Dissolved oxygen.**

(1) **Screening levels for DO in streams.**

(A) Screening levels for DO in habitat limited aquatic communities shall be 4.0 mg/L from April 1 through June 15 each year and 3.0 mg/L for the remainder of the year.

(B) Screening levels for DO in warm water aquatic communities shall be 4.0 mg/L from June 16 through October 15 each year and 5.0 mg/L for the remainder of the year.

(C) Screening levels for DO in cool water aquatic communities and trout fisheries shall be 5.0 mg/L from June 1 through October 15 each year and 6.0 mg/L for the remainder of the year.

(2) **Screening levels for DO in lakes.**

(A) If greater than 70% of the water column at any given sample site in a lake or an arm of a lake is less than 2 mg/L, the Fish and Wildlife Propagation beneficial use shall be deemed to be not supported.

(B) If 50% or more, but not greater than 70%, of the water column at any given sample site in a lake or arm of a lake is less than 2 mg/L, the Fish and Wildlife Propagation beneficial use shall be deemed to be partially supported.

(C) The screening level for surface DO in a lake or arm of a lake shall be 4 mg/L from June 16 through October 15 each year and 5.0 mg/L for the remainder of the year.

(3) **Support tests.**

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to the DO criterion if no more than 10% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(C) of this Section.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be partially supported with respect to the DO criterion if greater than 10% but less than 25% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(C) of this Section.

(C) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to the DO criterion if at least 25% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(C) of this Section.

(c) **Toxicants.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any individual toxicant parameter if no more than one of the sample concentrations from the waterbody exceeds the acute or chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(G) and 785:45 Appendix G, Table 2.

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be partially supported with respect to any individual toxicant parameter if more than one but not greater than 10% of the sample concentrations from the waterbody exceed the acute or chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(G) and 785:45 Appendix G, Table 2.

(3) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if greater than 10% of the sample concentrations from that waterbody exceed the acute or chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(G) and 785:45 Appendix G, Table 2.

(d) **pH.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to pH occurring other than by natural causes if no more than 10% of the sample concentrations from that waterbody fall outside the screening interval prescribed in 785:45-5-12(f)(3).

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be partially supported with respect to pH occurring other than by natural causes if greater than 10% but less than 25% of the sample concentrations from that waterbody fall outside the screening interval prescribed in 785:45-5-12(f)(3).

(3) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not

supported with respect to pH occurring other than by natural causes if at least 25% of the sample concentrations from that waterbody fall outside the screening interval prescribed in 785:45-5-12(f)(3).

(e) **Biological criteria.**

(1) If data demonstrate that an assemblage of fish or macro invertebrates from a waterbody is significantly degraded, according to 785:45-5-12(f)(5), from that expected for the subcategory of Fish and Wildlife Propagation designated in OAC 785:45 for that waterbody, then that subcategory may be deemed by the appropriate state environmental agency to be not supported.

(2) All physical assessments and biological collections shall be performed in accordance with the requirements set forth in OWRB Technical Report No. 99-3 entitled "Standard Operating Procedures for Stream Assessments and Biological Collections Related to Biological Criteria in Oklahoma".

(3) Evaluation of the biological collections shall include identification of fish samples to species level. Determinations of tolerance level shall be made according to Jester et al. 1992, "The Fishes of Oklahoma. Their Gross Habitats, and Their Tolerance of Degradation in Water Quality and Habitat", Proceedings of Oklahoma Academy of Sciences, 72:7-19.

(4) The determination of whether the use of Fish and Wildlife Propagation is supported in wadable streams in Oklahoma ecoregions shall be made according to all of the requirements of this subsection (e), the application of Appendix C of this Chapter, and the special provisions in subsections (g) through (i), where applicable, of this Section. Streams with undetermined use support status shall be subject to additional investigation that considers stream order, habitat factors and local reference streams before the use support determination is made.

(f) **Turbidity.** The criteria for turbidity stated in 785:45-5-12(f)(7) shall constitute the screening levels for turbidity. The tests for use support shall follow the default protocol in 785:46-15-4(b).

(g) **Special provisions for Ouachita Mountains wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Ouachita Mountains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether

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this subcategory is supported shall be deemed undetermined.

(h) **Special provisions for Arkansas Valley wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Arkansas Valley ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(i) **Special provisions for Boston Mountains and Ozark Highlands wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Boston Mountains and Ozark Highlands ecoregions shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 37 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 29 or less. If a score is 30 to 36 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 31 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 30 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(j) **Special provisions for Central Irregular Plains wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Central Irregular Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 28 or less. If a score is 29 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 30 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 29 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(3) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 25 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 16 or less. If a score is 17 to 24 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

**APPENDIX A. DILUTIONS FOR CHRONIC TOXICITY TESTING [REVOKED]**

Whole effluent chronic toxicity testing requires that test organisms be subjected to various effluent dilutions. The dilution series for chronic toxicity testing is based on the low flow dilution (LFD). The chronic low flow dilution equations are as follows:

$$\text{LFD} = (1.94Q^*) / (1 + Q^*)$$

when  $Q^*$  is less than or equal to 0.1823, or

$$\text{LFD} = 1 / (6.17 - 15.51Q^*)$$

when  $Q^*$  is greater than 0.1823 and less than 0.3333, or

$$\text{LFD} = 1$$

when  $Q^*$  is greater than or equal to 0.3333.  $Q^* = Q_e/Q_u$ .  $Q_e$  is the largest thirty day average flow for an industrial discharge, if known, and the design flow otherwise.  $Q_u$  is 1 cfs or the 7Q2 receiving stream flow, if known to be larger. Consult the Continuing Planning Process document for additional explanation.

A dilution series for chronic toxicity testing is listed in Table 1 of this Appendix. Percent Low Flow Dilution is given in column 4 of Table 1. The dilution series is based upon this LFD. For example, where an LFD is 30%, the appropriate series would be 13%, 17%, 23%, 30%, and 40%, in addition to the required 0% Control. This series ensures one dilution above the LFD, which aids statistical analysis. For facilities with LFDs greater than 75%, the LFD is the highest dilution used. This will result in four dilutions and the 0% Control below the LFD.

Whole effluent acute toxicity testing requires that test organisms be subjected to various effluent dilutions. The dilution series for acute toxicity testing is based on the acute low flow dilution (LFD). The acute low flow dilution equation is:

$$\text{LFD} = Q_e / 100.$$

A dilution series for acute toxicity testing is listed in Table 1 of this Appendix. LFD x 100 (column 4) shall always be one percent (1%) or larger.

**TABLE 1.**  
**The 0.75 Dilution Series For Use In Chronic Toxicity Testing**

Control		100 X LFD				
0 %	1	2	3	4	5	
	0.4	0.6	0.8	1.0	1.3	
	0.8	1.1	1.5	2.0	2.7	
	1.3	1.7	2.3	3.0	4.0	
	1.7	2.3	3.0	4.0	5.3	
	2.1	2.8	3.8	5.0	6.7	
	2.5	3.4	4.5	6.0	8.0	
	3	4	5	7	9	
	3	5	6	8	11	
	4	5	7	9	12	
	4	6	8	10	13	
	5	6	8	11	15	
	5	7	9	12	16	
	5	7	10	13	17	
	6	8	11	14	19	
	6	8	11	15	20	
	7	9	12	16	21	
	7	10	13	17	23	
	8	10	14	18	24	
	8	11	14	19	25	
	8	11	15	20	27	
	9	12	16	21	28	
	9	12	17	22	29	
	10	13	17	23	31	
	10	14	18	24	32	
	11	14	19	25	33	
	11	15	20	26	35	
	11	15	20	27	36	
	12	16	21	28	37	

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Control		100 X LFD				
0 %	1	2	3	4	5	
	12	16	22	29	39	
	13	17	23	30	40	
	13	17	23	31	41	
	14	18	24	32	43	
	14	19	25	33	44	
	14	19	26	34	45	
	15	20	26	35	47	
	15	20	27	36	48	
	16	21	28	37	49	
	16	21	29	38	51	
	16	22	29	39	52	
	17	23	30	40	53	
	17	23	31	41	55	
	18	24	32	42	56	
	18	24	32	43	57	
	19	25	33	44	59	
	19	25	34	45	60	
	19	26	35	46	61	
	20	26	35	47	63	
	20	27	36	48	64	
	21	28	37	49	65	
	21	28	38	50	67	
	22	29	38	51	68	
	22	29	39	52	69	
	22	30	40	53	71	
	23	30	41	54	72	
	23	31	41	55	73	
	24	32	42	56	75	
	24	32	43	57	76	
	24	33	44	58	77	

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Control		100 X LFD			
0 %	1	2	3	4	5
	25	33	44	59	79
	25	34	45	60	80
	26	34	46	61	81
	26	35	47	62	83
	27	35	47	63	84
	27	36	48	64	85
	27	37	49	65	87
	28	37	50	66	88
	28	38	50	67	89
	29	38	51	68	91
	29	39	52	69	92
	30	39	53	70	93
	30	40	53	71	95
	30	41	54	72	96
	31	41	55	73	97
	31	42	56	74	99
	32	42	56	75	100
24	32	43	57	76	
24	32	43	58	77	
25	33	44	59	78	
25	33	44	59	79	
25	34	45	60	80	
26	34	46	61	81	
26	35	46	62	82	
26	35	47	62	83	
27	35	47	63	84	
27	36	48	64	85	
27	36	48	65	86	
28	37	49	65	87	
28	37	50	66	88	

Control			100 X LFD		
0 %	1	2	3	4	5
28	38	50	67	89	
28	38	51	68	90	
29	38	51	68	91	
29	39	52	69	92	
29	39	52	70	93	
30	40	53	71	94	
30	40	53	71	95	
30	41	54	72	96	
31	41	55	73	97	
31	41	55	74	98	
31	42	56	74	99	
32	42	56	75	100	

[OAR Docket #03-688; filed 4-21-03]

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

[OAR Docket #03-637]

**RULEMAKING ACTION:**

PERMANENT Final Adoption

**RULES:**

- Subchapter 1. Harvest and Possession Limits
- 800:10-1-5. Bag limits on fish [AMENDED]
- 800:10-1-7. Possession limit [AMENDED]
- Subchapter 3. Methods of Taking
- 800:10-3-3. Additional definitions [AMENDED]
- 800:10-3-4. General: hook and line, rod and reel [AMENDED]
- 800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, ~~and spears~~ and spearguns, snagging, noodling and netting [AMENDED]

**AUTHORITY:**

Title 29 O.S., Section 3-103, 5-401 and 6-303 and 6-303.1; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

**DATES:**

**Comment period:**

December 2, 2002 through January 17, 2003

**Public Hearings:**

**Date:** January 13, 2003

**Time:** 7:00 p.m.

**Place:** Miami - Miami Civic Center, 129 5<sup>th</sup> Street NW, Banquet Room

**Date:** January 14, 2003

**Time:** 7:00 p.m.

**Place:** Tulsa - Tulsa Technology Center, Riverside Campus for Applied Science, Technology and Research, 801 East 91<sup>st</sup> Street, Alliance Bldg Auditorium, Room A-159

**Adoption:**

February 3, 2003

**Submitted to Governor:**

February 5, 2003

**Submitted to House:**

February 5, 2003

**Submitted to Senate:**

February 5, 2003

**Gubernatorial approval:**

March 17, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 1, 2003.

**Final adoption:**

April 1, 2003

**Effective date:**

July 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded Rules:**

- Subchapter 1. Harvest and Possession Limits
- 800:10-1-5. Bag limits on fish [AMENDED]
- 800:10-1-7. Possession limit [AMENDED]
- Subchapter 3. Methods of Taking
- 800:10-3-3. Additional definitions [AMENDED]
- 800:10-3-4. General: hook and line, rod and reel [AMENDED]
- 800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, ~~and spears~~ and spearguns, snagging, noodling and netting [AMENDED]

**Gubernatorial Approval:**

October 8, 2002

**Register Publication:**

November 15, 2002

**Docket Number:**

02-1383

**Availability:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

# Permanent Final Adoptions

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## ANALYSIS:

These rules would reduce bag limits and restrict certain methods of taking paddlefish. These rules are needed to ensure the long-term biological integrity of Oklahoma paddlefish populations.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.**

## SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

### 800:10-1-5. Bag limits on fish

No person shall, during any one day, take, attempt to take, kill, or harvest more than:

- (1) Six (6) largemouth, smallmouth, and/or spotted bass or six in aggregate, except at Lake Hefner where the limit on smallmouth bass is one (1) fish 18 inches or longer, in "Close To Home" fishing water where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), at Lake Arcadia the limit is three (3), at Lake Konawa, McGee Creek Lake, Lake Nanih Waiya, Dripping Springs Lake, Lake Raymond Gary and Crowder Lake (Washita County) the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer, at Broken Bow, Skiatook and Tenkiller lakes where the limit on spotted bass is fifteen (15) per day, in Baron Fork Creek, Flint Creek, Illinois River upstream from the Baron Fork Creek confluence, Lee Creek, and Little Lee Creek where the aggregate limit is six (6), of which only one (1) smallmouth bass may be twelve (12) inches or longer, and in the Glover River from the confluence with the Little River upstream to the "Forks of the Glover River" where the aggregate limit is six (6), of which only three (3) may be smallmouth bass.
- (2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). For scuba divers with spearguns, the limit is three (3) per day or three (3) in aggregate from May 1 through August 31, annually.
- (3) Thirty-seven (37) crappie (*Pomoxis* sp.) except at Blue River Public Fishing and Hunting Area where the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).
- (4) Six (6) rainbow trout - possession limit of twelve (12) after first day, except in the Mountain Fork River from the State Park Dam downstream to the Re-regulation Dam where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling).
- (5) Six (6) brown trout, except in the Mountain Fork River below Broken Bow dam downstream to the U. S. Highway 70 bridge, and in the Illinois River from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.
- (6) One (1) Northern pike.
- (7) One (1) muskellunge.
- (8) Five (5) walleye, sauger and/or saugeye, or five (5) in aggregate.
- (9) Fifteen (15) striped bass of which only five (5) may be twenty (20) inches or longer, except in the discharge area of Sooner Reservoir where the daily bag limit is five (5) and at Great Salt Plains Reservoir where the daily bag is twenty (20) of which only five (5) may be twenty (20) inches or longer (no culling).
- (10) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir and five (5) striped bass and/or striped bass hybrids or five (5) in aggregate in the Red River below Denison Dam (no culling). This paragraph shall become effective September 1, 1996.
- (11) Ten (10) flathead catfish, except in Lake Texoma where the daily limit is five (5), and for noodlers and scuba divers the daily limit is three (3) from May 1 through August 31, annually.
- (12) Twenty (20) striped bass hybrids and/or white bass, or twenty (20) in aggregate, of which only five (5) may be twenty (20) inches or longer in lakes Altus-Lugert, Birch, Canton (Canton Lake boundaries are from State Highway 281 to one thousand (1,000) feet below Canton Dam), Carl Blackwell, Foss, Ft. Cobb, Great Salt Plains, Konawa, Ft. Supply, Tom Steed and Waurika, including tailwaters and Grand including all tributaries to stateline and below Grand River Dam (Pensacola Dam) downstream to State Highway 82 bridge and Oologah Lake including upstream on all tributaries to stateline and downstream below the dam to the mouth of the Caney River.
- (13) Five (5) striped bass hybrids of which only two (2) may be 20 inches or longer in Skiatook Lake.
- (14) Five (5) striped bass hybrids in Lake Carl Etling.
- (15) Five (5) striped bass hybrid and/or white bass in Optima Reservoir and the discharge area of Sooner Reservoir.
- (16) Twenty-five (25) white bass in Lake Texoma.
- (17) One (1) paddlefish (*Polydon spathula*) per day, statewide. The catch and release of paddlefish is permitted year round by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released. ~~Three (3) paddlefish (*Polydon spathula*) from March 15 through May 15, annually, when catch and release of paddlefish taken by any means other than by~~

~~trotlines and throwlines is prohibited, and from May 16 through March 14 of the following year the daily limit is one (1) when catch and release is permitted except by use of bow and arrow and gigs. Paddlefish caught and placed on a stringer or otherwise held in possession must be tagged immediately and cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other fishermen. Each cleaned paddlefish, or its meat, eggs, or carcass, must also be tagged and kept separate from all other cleaned paddlefish or its parts. Tagged means plainly labeled with the taker's first and last name, address, and fishing license number. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Fishermen must cease snagging when they have taken their daily limit of paddlefish into possession. Persons who possess paddlefish shall keep their paddlefish separate and distinctly identifiable (plainly labeled with taker's name and address) from paddlefish possessed by another person.~~

(18) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(19) Other fish do not have bag or possession limits.

**800:10-1-7. Possession limit**

(a) ~~No resident or nonresident person shall have in their possession, in the field, more than one (1) daily bag limit listed in 800:10-1-5 and 800:10-1-6. Nonresidents shall not have more than two (2) daily bag limits. In the field, except for paddlefish which can be four (4) daily bag limits. "In the Field" means while fishing, or while in a boat, or on the bank or in the immediate vicinity of any river, creek, stream, lake or pond, or while transporting or carrying the fish from the waters described above to camp or from such waters to the final destination, upon leaving the state.~~

(b) No person shall take and/or export out of state via land based transportation more than one hundred and fifty (150) nongame fish, including shad, for personal use as bait.

**SUBCHAPTER 3. METHODS OF TAKING**

**800:10-3-3. Additional definitions**

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

"**Bow and arrow**" when used for bowfishing means a long bow only (any bow except a crossbow) and an arrow having no more than three (3) points with not more than two (2) barbs on each point.

"**Foul hooked**" means a fish hooked other than inside the mouth.

"**Gaff hook**" means a handheld hook or handheld pole with a hook attached and may only be used in the landing of a fish, other than paddlefish, already hooked by other legal hook and line methods.

"**Gig**" means a hand-held fish spearing device mounted at the end of a shaft containing not more than three (3) points and not more than two (2) barbs on each point.

"**Grabhook**" means a handheld hook or handheld hand-made pole, or rope, with a single hook attached used in the initial taking of a fish.

"**Jugline**" means a vertical line suspended from a non-metallic or nonglass floating device which is drifting free or anchored, having no more than five (5) hooks per line and limited to twenty (20) such juglines per person.

"**Limblines**" means a line attached to a limb, branch or other natural object having no more than two (2) hooks attached per line and limited to twenty (20) such limblines per person.

"**Noodling**" means the taking of fish by use of hands only.

"**Snagging**" means the dragging of ~~one (1) single hook or one (1) treble~~ hook through the water attached to a hand-held line or fishing rod and line for the purpose of impaling fish.

"**Yo-Yo**" means any mechanical fishing device which automatically recoils when a fish strikes and is limited to no more than twenty (20) such devices per person.

"**Unattended**" means not within visual observing distance.

**800:10-3-4. General: hook and line, rod and reel**

(a) All waters of the state are open to taking game and nongame fish by hook and line attached to a pole or rod and reel, trotline, throwline, or other hook and line methods, ~~except~~ where closed by other provisions in this Chapter.

(b) No person may use more than seven (7) poles or rods while fishing, unless provided otherwise by other provisions in this Chapter.

(c) The use of "Gaff Hooks", or the use of any other technique or device that severely injures the fish, to assist in landing paddlefish, is prohibited.

**800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spears and spearguns, snagging, noodling and netting**

(a) **Bow and arrow.** The use of bow and arrows in bowfishing shall be lawful for taking nongame fish only in all waters of the state throughout the year, except:

(1) Illinois River and its tributaries shall be closed at all times to such fishing except, those portions above the Horseshoe Bend boat ramp on Tenkiller Reservoir which is open from December 1 through March 31 annually. Tenkiller Reservoir below Horseshoe Bend boat ramp is open to bowfishing.

(2) Black Fork Creek is closed except that portion from the old Heavener Fish Hatchery Dam downstream to the confluence with Poteau River shall be open during the

## Permanent Final Adoptions

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period beginning December 1 and continuing through May 15 of the following year.

- (3) Reservoir tailwaters, other than Eufaula, Keystone, Wister, Fort Gibson, Thunderbird and Hudson (Markham Ferry) shall be closed to fishing with bow and arrows throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.
  - (4) All waters defined as "Designated Trout Areas" during open season for taking trout are closed.
  - (5) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.
  - (6) Only that section of the Caney River from Hulah Dam downstream approximately 1,200 feet to the re-regulation dam is closed. Fishing with a bow and arrow is lawful in the Caney River below the re-regulation dam.
  - (7) The following portions of Grand River:
    - (A) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.
    - (B) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (approximately  $\frac{1}{2}$  mile) is closed throughout the year with the next  $\frac{1}{2}$  mile downstream from the highline crossing closed during periods when the spillway gates are open and discharging water and for seven (7) days following closure of the spillway gates.
  - (8) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.
  - (9) All Department Fishing Areas, "Close To Home" fishing waters and Lakes Pickens, Carl Albert and Taft and all ponds and lakes in the Ouachita National Forest are closed.
  - (10) The taking of paddlefish by bow and arrow is prohibited from May 16 through March 14 of the following year, statewide.
  - (11) Bowfishing may be used at Lakes Hefner, Overholser (including tailwaters and downstream to NW 10<sup>th</sup> St. bridge) and Draper throughout the year during daylight hours only.
  - (12) The Salt Fork of the Arkansas River from the spillway of Great Salt Plains Reservoir downstream to the State Highway 38 Bridge is closed.
- (b) **Grabhooks.** Taking fish by use of a grabhook is prohibited in all state waters except, within waters of Delaware and Mayes Counties (excluding reservoir tailwaters which are closed) divers equipped with scuba gear may use a grabhook for taking nongame fish only from June 15 through July 31.
- (c) **Gigs, spears and spearguns.** The use of gigs, spears and spearguns containing not more than three (3) points with no more than two (2) barbs on each point shall be lawful for taking nongame fish only, except white bass may be taken by use of a gig. These methods are lawful in all:
- (1) Rivers and streams from December 1 through March 31, except:

(A) The taking of paddlefish by use of gig, spear or speargun is prohibited from May 16 through March 14 of the following year, statewide.

(B) The Poteau and Fourche Maline Rivers and all their tributaries within LeFlore County are closed throughout the year.

(C) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(D) The Canadian River from Eufaula Dam downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of Grand River:

(i) The main river channel of the Grand River below the turbine outlets of Grand River Dam downstream to State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream for a distance of one (1) mile is closed throughout the year.

(G) Rivers and streams in Delaware and Mayes counties are open to the use of gigs throughout the year, unless specifically closed in other sections of this chapter.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Lakes and reservoirs throughout the year, except:

(A) Waters within the boundaries of the Wichita Mountains Wildlife Refuge other than that portion of Lake Elmer Thomas are closed.

(B) Tenkiller Reservoir, below the Horseshoe Bend boat ramp, is closed throughout the year except by speargunning when used with a self-contained underwater breathing apparatus which is closed from June 15 through July 15 annually to the taking of flathead catfish only.

(C) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Carl Albert, Sooner, Lone Chimney and Taft and all ponds and lakes in the Ouachita National Forest are closed. Konawa is closed to gigging.

(D) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10<sup>th</sup> St. bridge) and Draper are closed.

(3) Reservoir tailwaters other than Hudson (Markham Ferry) shall be closed to fishing with gigs, spears and spearguns throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(d) **Snagging.** Snagging for nongame fish only shall be lawful in all waters of the State throughout the year, except:

(1) Reservoir tailwaters other than Fort Gibson which is open 24 hours a day, and Wister and Hudson (Markham Ferry) which are open from 10 p.m. to 6 a.m.~~sunset to sunrise~~; shall be closed to fishing by snagging throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(2) The following rivers, lakes, and streams:  
 (A) The Illinois River and its tributaries above the Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(D) The Canadian River from Eufaula Dam tailwater Downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from the Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) That portion of the Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (a distance of approximately  $\frac{1}{2}$  mile) is closed throughout the year with the next  $\frac{1}{2}$  mile downstream from the highline crossing closed during periods when the spillway gates are closed.

~~(G) The use of "Gaff Hooks" to assist in landing paddlefish is prohibited.~~

~~(HG)~~ The Arkansas River from the tailwaters below Keystone Dam downstream to the Interstate 44 (Skelly Drive) Bridge at Tulsa shall be closed at all times to such fishing.

~~(H)~~ The Black Fork Creek within the boundaries of LeFlore County is closed throughout the year, except during the period from April 15 through May 15 each year when snagging shall be lawful.

~~(I)~~ The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

~~(KJ)~~ All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Pickens, Carl Albert, Sooner and Konawa and all ponds and lakes in the Ouachita National Forest are closed.

~~(LK)~~ Lakes Hefner, Overholser (including tailwaters and downstream to NW 10<sup>th</sup> St. bridge) and Draper are closed.

(3) When snagging for paddlefish the hook must have the barbs removed or completely closed.

(e) **Noodling.** Possession of hooks, gaffs, spears, poles with hooks attached and/or ropes with hooks attached while in the act of noodling, shall be proof of violation of the "hands only" noodling law. Noodling shall be lawful for nongame fish only throughout the year in all:

(1) Rivers and streams of the state, except:

(A) The Illinois River and its tributaries above Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) Kiamichi River from Hugo Dam downstream to the first railroad bridge is closed.

(D) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing is closed throughout the year except the day of and two (2) days following closure of the spillway gates when noodling will be legal.

(E) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Corps of Engineers and Bureau of Reclamation Reservoirs, Grand and Hudson Lakes.

(3) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(4) All Department Fishing Areas, all "Close To Home" fishing waters (except noodling is allowed in the North Canadian River from the NW 10<sup>th</sup> St. bridge downstream to the MacArthur St. bridge in Oklahoma City) and Lakes Pickens, Carl Albert, Taft, and Lone Chimney, and all ponds and lakes in the Ouachita National Forest are closed.

(5) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10<sup>th</sup> St. bridge) and Draper are closed.

(f) **Netting (noncommercial).** Only nets defined as gill nets, trammel nets, hoop nets, cast nets, trawl nets, handheld dip nets or haul seines may be used, provided:

(1) Hoop nets shall be no longer than ten (10) feet in length with mesh size no smaller than three (3) inch square, constructed of nonmetallic mesh only, having no more than seven (7) hoops three (3) feet in diameter or smaller.

(2) Mesh size for gill nets and trammel nets, or seines shall be no smaller than four (4) inch square mesh.

(3) All nets must be attended once every twenty-four (24) hours.

(4) Each license holder shall be limited to a maximum of three hundred (300) feet of net or a total of four (4) hoop nets in the water at any time.

(5) Each net shall have the name and address of the owner attached thereto, if the net is to be left unattended.

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(6) It shall be unlawful to sell, barter, or trade, ship or transport from the State of Oklahoma any fish taken under the noncommercial netting provisions.

(7) Noncommercial netting is prohibited statewide during April and May annually.

(8) Only nongame fish may be taken in waters that are open for noncommercial netting.

(9) The following lakes and reservoirs are closed to all netting for game and/or nongame fish except under commercial fishing license:

- (A) Canton;
- (B) Wister;
- (C) Fort Gibson;
- (D) Lugert;
- (E) Oologah;
- (F) Grand Lake;
- (G) Wash Hudson;
- (H) Eufaula;
- (I) Texoma;
- (J) Arbuckle;
- (K) Carl Blackwell;
- (L) Fort Cobb;
- (M) Fort Supply;
- (N) Foss;
- (O) Greenleaf;
- (P) Heyburn;
- (Q) Hulah;
- (R) Keystone;
- (S) Murray;
- (T) Salt Plains;
- (U) Tenkiller;
- (V) Thunderbird;
- (W) Broken Bow;
- (X) Pine Creek;
- (Y) Robert S. Kerr;
- (Z) Webbers Falls;
- (AA) W.D. Mayo;
- (BB) Chouteau;
- (CC) Kaw;
- (DD) Newt Graham;
- (EE) Carl Albert;
- (FF) Hugo;
- (GG) Sooner;
- (HH) Konawa;
- (II) Ellsworth;
- (JJ) Lawtonka;
- (KK) Copan;
- (LL) Sardis;
- (MM) Optima;
- (NN) Atoka;
- (OO) Clayton State Park Lake;
- (PP) Eucha;
- (QQ) Spavinaw;
- (RR) Arcadia;
- (SS) McGee Creek;
- (TT) all Department Fishing Areas and all ponds and lakes in the Ouachita National Forest;

(UU) all waters within the boundaries of the Wichita Mountains Wildlife Refuge; and

(VV) all new Federal Reservoirs.

(WW) all "Close To Home" fishing waters are closed.

(XX) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10<sup>th</sup> St. bridge) and Draper are closed.

(10) The following rivers and streams are closed to all netting for game and/or nongame fish except under commercial fishing license:

- (A) Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland Co.;
- (B) Kiamichi River above Hugo Lake and from Hugo Dam downstream to the Red River;
- (C) Caney River;
- (D) Little River upstream from Highway 98 Bridge;
- (E) Glover River upstream from State Highway 7;
- (F) Mountain Fork River upstream from U.S. Highway 70 Bridge;
- (G) Washita River upstream to U.S. Highway 77 Bridge, south of Davis;
- (H) Red River from the Choctaw/Bryan County line upstream to Interstate 35 Bridge;
- (I) Blue River;
- (J) Illinois River;
- (K) Barren Fork River;
- (L) Pennington Creek;
- (M) Lukfata Creek;
- (N) Black Fork Creek;
- (O) Lee Creek;
- (P) Deep Fork River upstream from Lake Eufaula to Arcadia Reservoir dam;
- (Q) Poteau and Fourche Maline Rivers in LeFlore County;
- (R) McGee Creek;
- (S) Sans Bois tributary of R.S. Kerr Reservoir;
- (T) all cutoffs, oxbows, side channels and tributaries of the streams and rivers named in (A) through (S);
- (U) All the old oxbows and cutoffs of the Arkansas River in LeFlore and Sequoyah Counties;
- (V) Arkansas River;
- (W) Cimarron River and its tributaries;
- (X) Salt Creek in Osage County;
- (Y) Salt Fork River;
- (Z) the Canadian River from Eufaula Dam downstream to the confluence with Robert S. Kerr Reservoir;
- (AA) the Neosho River from the Kansas border downstream to the confluence with Webbers Falls Reservoir;
- (BB) Verdigris River; and
- (CC) Spring River.

(11) Cast netting, trawl netting and dip netting bait for personal use is lawful in all waters of this state except in Department Fishing Areas. Cast nets shall have a mesh

size no greater than three-eighths (3/8) inch square mesh. Trawl nets pulled by motor driven boats may not exceed three (3) feet in diameter with no greater than three-eighths (3/8) inch square mesh.

[OAR Docket #03-637; filed 4-14-03]

**TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION  
CHAPTER 15. COMMERCIAL HARVEST RULES, AQUATIC SPECIES**

[OAR Docket #03-638]

**RULEMAKING ACTION:**

PERMANENT Final Adoption

**RULES:**

- Subchapter 11. Commercial Aquatic Production [NEW]
- 800:15-11-1. Purpose [NEW]
- 800:15-11-2. List of restricted aquatic species [NEW]
- 800:15-11-3. Inspection authority [NEW]
- 800:15-11-4. Penalties [NEW]

**AUTHORITY:**

Title 29 O.S., Section 3-103, 5-401, 6-303.1 and 7-602; Title 2 O.S., Sections 6-311, 6-314 and 6-317; Title 4 O.S.; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

**DATES:**

**Comment period:**

December 2, 2002 through January 3, 2003

**Public Hearings:**

No public hearings held and none requested.

**Adoption:**

February 3, 2003

**Submitted to Governor:**

February 5, 2003

**Submitted to House:**

February 5, 2003

**Submitted to Senate:**

February 5, 2003

**Gubernatorial approval:**

March 17, 2003

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 1, 2003.

**Final adoption:**

April 1, 2003

**Effective date:**

July 1, 2003

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded Rules:**

- Subchapter 11. Commercial Aquatic Production [NEW]
- 800:15-11-1. Purpose [NEW]
- 800:15-11-2. List of restricted aquatic species [NEW]
- 800:15-11-3 Inspection authority [NEW]
- 800:15-11-4. Penalties [NEW]

**Gubernatorial Approval:**

October 8, 2002

**Register Publication:**

November 15, 2002

**Docket Number:**

02-1384

**Availability:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Senate Bill 920 transferred licensing responsibilities for private commercial aquatic culture operations from the Wildlife Department to the Department of Agriculture. These new rules were developed and

recommended by the Department and list certain restricted aquatic species which shall not be propagated or offered for sale, trade, or profit in commercial aquatic operations. Inspection authority and penalties are also defined.

**CONTACT PERSON:**

Kim Erickson, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.**

**SUBCHAPTER 11. COMMERCIAL AQUATIC PRODUCTION**

**800:15-11-1. Purpose**

The purpose of this chapter is to designate restricted aquatic species used in commercial propagation of aquatic species pursuant to 2 O.S., Sections 6-311, 6-314, 6-317; 29 O.S. Sections 6-303.1, and 7-602. Penalties for violations of rules are also provided.

**800:15-11-2. List of restricted aquatic species**

The following is a list of restricted aquatic species which shall not, in whole or in part, be propagated or offered for sale, trade, or profit, in commercial aquatic production operations licensed by the Oklahoma Department of Agriculture:

- (1) Bighead carp (*Hypophthalmichthys molitrix*).
- (2) Silver carp (*Aristichthys nobilis*).
- (3) Black carp (*Mylopharyngodon piceus*).
- (4) Alewives (*Alosa pseudoharengus*).
- (5) Rainbow smelt (*Osmerus mordax*).
- (6) Rudd and rudd hybrids (*Scardinius spp.*).
- (7) Paddlefish (*Polyodon spathula*).
- (8) Alligator snapping turtle (*Macroclmemy temminckii*).
- (9) American Alligator (*Alligator mississippiensis*).
- (10) All other state and/or Federal endangered or threatened species, or species of special concern.

**800:15-11-3. Inspection authority**

Any duly authorized Oklahoma Department of Wildlife employee shall have the power to inspect, at reasonable times, records, facilities and operations of any person engaging in the commercial production of aquatic species licensed by the Oklahoma Department of Agriculture in accordance with provisions of 2 O.S., Section 6-314.

**800:15-11-4. Penalties**

Any person violating these Chapter provisions shall be subject to the penalties provided in 29 O.S., Section 8-104.

[OAR Docket #03-638; filed 4-14-03]



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# Local Projects

Executive Order 95-26 requires executive agencies to "announce the availability of contracts for local project funds by publication in the *Oklahoma Register* at least one month prior to the deadline for applications for such contracts" [EO 95-26 (5)].

A "local project funding contract" is defined as "an agreement between a state agency and either a local government or private entity, or both, in which the state agency agrees to provide funding to the local government or private entity who agrees to accomplish a public purpose. In addition, the direct benefits of such a contract accrue primarily to the local population rather than the state as a whole. . . . Local project funding contracts do not include contracts subject to state competitive bidding statutory requirements." [EO 95-26 (1)].

*For additional information on local projects, see Executive Order 95-26 [OAC 1:1995-26] and Attorney General Opinion 87-100.*

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## **OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY Local Project Funding Contract Announcement**

*[OAR Docket #03-629]*

### **DESCRIPTION OF PROJECT:**

Competitive matching grants are available through the State Board of Agriculture's Agricultural Development and Forestry Grant Program for projects to develop and improve state and local community forestry programs. Grants must be matched on a 50/50 basis by the applicant. Grantees will receive reimbursement of 50 percent of documented expenses up to the approved grant amount. Grant projects must not begin prior to the award of contract and must be completed within one year of the date of award. Applications will be rated and only the top-ranked projects will be funded, to the extent of funds available for the grant program. Categories and examples of fundable projects include: local government program development or improvement (community forest inventories, development of master urban forestry plans or Tree Boards); demonstration or site-specific projects (demonstrations of tree maintenance or tree protection during construction); non-profit administration (workshops or training courses, student interns); information and educational projects (Arbor Day programs, exhibits, educational materials). Tree planting projects are not eligible unless they are a component of a larger educational or community forestry demonstration project.

### **FUNDS AVAILABLE:**

The Department of Agriculture, Food, and Forestry expects to award approximately \$283,000 in federal funds for this grant program.

### **ELIGIBILITY:**

Units of local and state government, approved non-profit groups, civic groups, neighborhood associations, local community tree volunteer groups and educational institutions in Oklahoma are eligible. Applicants must assure that budget match is available. Grant funds must not replace currently funded projects. (Authority: Federal Cooperative Forestry Assistance Act of 1978, as amended by the 1990 Farm Bill; Administrative Rules for the Agricultural Development and Forestry Grant Program; O.S. Title 2, Article 16, Sections 16-3, 16-4 and 16-55.)

### **APPLICATION DEADLINE:**

Applications must be received by ODAFF Forestry Services before close of business on June 27, 2003.

### **CONTACT PERSON:**

ODAFF-Forestry Services contact person is: Mark Bays, Urban Forestry Coordinator, Oklahoma Department of Agriculture, Food, and Forestry-Forestry Services Division, 2800 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4298, (405) 522-6158.

*[OAR Docket #03-629; filed 4-10-03]*

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## **OKLAHOMA WATER RESOURCES BOARD Local Project Funding Contract Announcement**

*[OAR Docket #03-711]*

### **DESCRIPTION OF PROJECT:**

The 1987 amendments to the Federal Clean Water Act provided for states to establish an ongoing Clean Water State Revolving Fund (CWSRF) loan program. This program enables eligible entities to receive low interest financing for eligible wastewater construction projects, including treatment works and urban storm water run off projects, and nonpoint source pollution control activities. Repayments of these loans, along with annual federal and state funds and investment income, provide financing for future loans.

The Oklahoma Water Resources Board (OWRB) administers the CWSRF and conducts ranking reviews for projects submitted by entities wishing to be considered for available loan funds. Selected entities are placed on a project priority list and ultimately enter into a 2-year construction loan agreement or a 20-year construction or refinancing loan agreement with the OWRB.

### **FUNDS AVAILABLE:**

Loan funds for wastewater projects totaling approximately \$87.2 million are anticipated to be available during FY 2003. The OWRB will hold a public meeting to receive comments on *the FY 2004 Priority List and Intended Use Plan* on June 20, 2003 at 1:30 p.m. at 3800 North Classen, Oklahoma City, Oklahoma.

### **ELIGIBILITY:**

Eligible entities include any city, town, county, State of Oklahoma, public trust, rural sewer district, political subdivision, or any combination thereof. The authority for this program is established by the Federal Water Quality Act of 1987 (P.L. 100-4) and Title 82 of Oklahoma Statutes Annotated, Section 1085.51 and following.

## Local Projects

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**APPLICATION DEADLINE:**

Entities wishing to be included on the State's FY 2004 Intended Use Plan should contact the OWRB and submit a pre-application form (available at [www.owrb.state.ok.us/forms/faforms](http://www.owrb.state.ok.us/forms/faforms)) prior to July 1, 2003.

**CONTACT PERSON:**

Julie Cunningham (405) 530-8800  
Financial Assistance Division

Oklahoma Water Resources Board  
3800 North Classen  
Oklahoma City, Oklahoma 73118  
e-mail: [jmcunningham@owrb.state.ok.us](mailto:jmcunningham@owrb.state.ok.us)

*[OAR Docket #03-711; filed 4-21-03]*

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