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Oklahoma **LAW** Enforcement Retirement System	395
Board on **LEGISLATIVE** Compensation	400
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Oklahoma **LINKED** Deposit Review Board	415
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Board of Trustees for the **MCCURTAIN** County Higher Education Program	430
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Board of Regents of **NORTHERN** Oklahoma College	480
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Oklahoma **SAVINGS** and Loan Board *(abolished 7-1-93)*	625
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Notices of Rulemaking Intent

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

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

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

TITLE 90. COUNCIL OF BOND OVERSIGHT CHAPTER 10. ADMINISTRATION OF THE OKLAHOMA BOND OVERSIGHT AND REFORM ACT

[OAR Docket #04-861]

RULEMAKING ACTION:

Notice of proposed Emergency rulemaking

PROPOSED RULES:

Subchapter 9. Reporting

90:10-9-2. Local governmental entities [AMENDED]

SUMMARY:

Certain members of the public have requested that the Council of Bond Oversight revise Subchapter 9. 90:10-9-2 (Notice by Local Governmental Entities). It has been requested that the rule be changed to request less specific information from Local Governmental Entities than is presently required.

AUTHORITY:

62 O.S., Section 695.8(A)(4), Executive and Legislative Bond Oversight Commissions; 62 O.S., Section 695.11A., Council of Bond Oversight-Validation of actions and obligations-Members-Quorum-Voting-Vacancy

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so by 4:00 p.m., June 23, 2004, at the Oklahoma State Bond Advisor's Office, 5900 N. Classen Court, Oklahoma City, OK 73118.

PUBLIC HEARING:

A public hearing will be held to provide a means by which persons may offer suggested input on the content of the proposed rules: 11:00 a.m., Thursday, June 24, 2004, Oklahoma State Bond Advisor's Office, 5900 N. Classen Court, Oklahoma City, OK 73118.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing by 4:00 p.m., June 23, 2004, at the Oklahoma State Bond Advisor's Office, 5900 N. Classen Court, Oklahoma City, OK 73118.

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the offices of the Oklahoma State Bond Advisor's Office, 5900 N. Classen Court, Oklahoma City, OK. Copies of proposed rules may be obtained at a cost of 25 cents per page copying charge from the Oklahoma State Bond Advisor's Office, 5900 N. Classen Court, Oklahoma City, OK 73118.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S.,§303(D), a rule impact statement will be prepared and will be available on and after June 1, 2004 at the same location listed above for reviewing and obtaining copies of the proposed rules.

CONTACT PERSON:

Lorie Collier, Oklahoma State Bond Advisor's Office (405) 602-3100; Lynn Rogers, Assistant Attorney General Counsel, (405) 522-4411.

[OAR Docket #04-861; filed 5-7-04]

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 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #04-771]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 3. Pharmacists
535:10-3-1.2. [AMENDED]
SUBMITTED TO GOVERNOR:
March 19, 2004
SUBMITTED TO HOUSE:
March 19, 2004
SUBMITTED TO SENATE:
March 19, 2004

[OAR Docket #04-771; filed 4-30-04]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 15. PHARMACIES

[OAR Docket #04-772]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 3. Pharmacies
535:15-3-2. [AMENDED]
535:15-3-21. [AMENDED]
Subchapter 5. Hospital Pharmacies
535:15-5-1. [AMENDED]
535:15-5-2. [AMENDED]
535:15-5-7. [AMENDED]
535:15-5-7.3. [AMENDED]
535:15-5-7.4. [AMENDED]
535:15-5-7.5. [AMENDED]
Subchapter 13. Pharmacy Technicians and Supportive Personnel
535:15-13-1. [AMENDED]
535:15-13-3. [AMENDED]
535:15-13-4. [AMENDED]
535:15-13-5. [AMENDED]
535:15-13-6. [AMENDED]
535:15-13-7. [AMENDED]
535:15-13-8. [AMENDED]
535:15-13-9. [AMENDED]
535:15-13-10. [AMENDED]
535:15-13-12. [AMENDED]
535:15-13-13. [AMENDED]
SUBMITTED TO GOVERNOR:
March 19, 2004
SUBMITTED TO HOUSE:
March 19, 2004
SUBMITTED TO SENATE:
March 19, 2004

[OAR Docket #04-772; filed 4-30-04]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, PACKAGERS AND WHOLESALERS

[OAR Docket #04-773]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-2. [AMENDED]
535:20-9-3. [AMENDED]
535:20-9-4. [AMENDED]
SUBMITTED TO GOVERNOR:
March 19, 2004
SUBMITTED TO HOUSE:
March 19, 2004
SUBMITTED TO SENATE:
March 19, 2004

[OAR Docket #04-773; filed 4-30-04]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 25. RULES AFFECTING VARIOUS REGISTRANTS

[OAR Docket #04-774]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 3. Applicants, Registrants, and Applications
535:25-3-3. [AMENDED]
Subchapter 7. Rules of Registrant Conduct
535:25-7-3. [AMENDED]

Subchapter 9. Violations of the Rules of Registrant Conduct
535:25-9-3. [AMENDED]

SUBMITTED TO GOVERNOR:
March 19, 2004

SUBMITTED TO HOUSE:
March 19, 2004

SUBMITTED TO SENATE:
March 19, 2004

[OAR Docket #04-774; filed 4-30-04]

Gubernatorial Approvals

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

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

TITLE 70. OKLAHOMA ARTS COUNCIL CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-781]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. General Course and Method of Operating
70:1-3-1. Agency office [AMENDED]
70:1-3-2. Agency office hours [AMENDED]
70:1-3-3. Communications with the Council [AMENDED]
70:1-3-6. Availability of Council records and policies [AMENDED]
70:1-3-7. Copies of official records [AMENDED]
70:1-3-12. Public petition requesting changes in rules and regulations [AMENDED]
70:1-3-13. Materials submitted to the Agency become property of the State of Oklahoma [RENUMBERED FROM 70:10-3-24]
Subchapter 5. Advisory ~~Groups~~Panels
70:1-5-1. Establishment of advisory ~~groups~~panels [AMENDED]
70:1-5-2. Eligibility [AMENDED]
70:1-5-3. Selection process [AMENDED]
Subchapter 7. ~~Resource Directories~~Information Resources
70:1-7-1. Establishment of ~~resource directories~~information resources [AMENDED]
70:1-7-2. Public notice of ~~resource directories~~information resources [AMENDED]
70:1-7-3. Use of Council forms [REVOKED]
70:1-7-4. Deadlines for resource directories [REVOKED]
Subchapter 9. State Art Collection
70:1-9-1. State Art Collection; Committee [AMENDED]
70:1-9-2. Art Collection Chairman [AMENDED]

GUBERNATORIAL APPROVAL:

April 15, 2004

[OAR Docket #04-781; filed 4-30-04]

TITLE 70. OKLAHOMA ARTS COUNCIL CHAPTER 10. OKLAHOMA ARTS COUNCIL PROGRAMS

[OAR Docket #04-782]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. General Provisions
70:10-1-2. Definitions [NEW]
70:10-1-3. Oklahoma Arts Council Programs [NEW]
Subchapter 3. ~~Project~~Financial Assistance ~~Program~~Programs
70:10-3-1. Disbursement of funds [REVOKED]
70:10-3-2. Deadlines for project assistance [REVOKED]
70:10-3-3. Proof of nonprofit and tax exempt status [REVOKED]
70:10-3-4. Final report requirement [REVOKED]
70:10-3-5. Credit line requirement [REVOKED]
70:10-3-8. Council share of contracts [REVOKED]
70:10-3-9. In-kind contributions [REVOKED]
70:10-3-10. Financial records requirements [REVOKED]
70:10-3-11. Fiscal year requirement [REVOKED]
70:10-3-12. Limitation of Council funding [REVOKED]
70:10-3-13. Legal assurances for all contracts [REVOKED]
70:10-3-14. Return of contracts deadline [REVOKED]
70:10-3-15. Permanent mailing address requirement [AMENDED]
70:10-3-16. Limitation on changes of contracts [REVOKED]
70:10-3-17. Final report deadline [REVOKED]
70:10-3-18. Protest procedure for project assistance [REVOKED]
70:10-3-19. Evaluation of projects, programs, activities and services [REVOKED]
70:10-3-20. Project assistance categories [REVOKED]
70:10-3-21. Counter proposals and counter offers of Council [REVOKED]
70:10-3-22. Council funding decision [REVOKED]
70:10-3-23. Audit and financial statement requirements [REVOKED]
70:10-3-24. Materials submitted to the Agency become property of the State of Oklahoma [REVOKED] [Renumbered to 70:1-3-13]
70:10-3-25. Qualifications of grant applicants [NEW]
70:10-3-26. Grantmaking power of the Oklahoma Arts Council [NEW]
70:10-3-27. Council funding decisions [NEW]
70:10-3-28. Disbursement of funds [NEW]
70:10-3-29. Limitations on changes of contracts [NEW]
70:10-3-30. Appeal procedure [NEW]
70:10-3-31. Audit and financial records [NEW]
Subchapter 5. Oklahoma Touring Program [REVOKED]
70:10-5-1. Sponsors and presenters [REVOKED]
70:10-5-2. Producers and touring groups [REVOKED]
Subchapter 7. Artists-in-Residence Program - School and Community Categories [REVOKED]

70:10-7-1. Program purpose and scope [REVOKED]
70:10-7-2. Deadlines for program [REVOKED]
70:10-7-3. Use of Council forms [REVOKED]
70:10-7-4. Council action on funding of program [REVOKED]
70:10-7-7. Sponsor and artists responsibilities [REVOKED]
70:10-7-8. Residency schedule requirements [REVOKED]
70:10-7-9. Self-employed artists [REVOKED]
70:10-7-10. Annual assessment of program [REVOKED]
70:10-7-11. Council responsibility for program [REVOKED]
70:10-7-12. Solicitation of new artists [REVOKED]
70:10-7-13. Contracting and payment procedure [REVOKED]
70:10-7-14. Payment contract return requirement [REVOKED]
70:10-7-15. Grievance procedure [REVOKED]
Subchapter 9. Artist Rosters [NEW]
70:10-9-1. Purpose [NEW]
70:10-9-2. Rosters [NEW]
70:10-9-3. Assessment of rosters [NEW]
70:10-9-4. Self-employed artists [NEW]
70:10-9-5. Roster appeal procedure [NEW]

GUBERNATORIAL APPROVAL:
April 15, 2004

[OAR Docket #04-782; filed 4-30-04]

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

[OAR Docket #04-806]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2.1. [AMENDED]
252:100-5-2.2. [AMENDED]
Subchapter 7. Permits for Minor Facilities
Part 1. General Provisions
252:100-7-1.1. [AMENDED]
252:100-7-2. [AMENDED]
Part 2. Permit Application Fees
252:100-7-3. [AMENDED]
Part 3. Construction Permits
252:100-7-15. [AMENDED]
Part 4. Operating Permits
252:100-7-18. [AMENDED]

GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-806; filed 5-3-04]

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

[OAR Docket #04-807]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 13. Open Burning
252:100-13-2. [AMENDED]
252:100-13-7. [AMENDED]
252:100-13-9. [AMENDED]

GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-807; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #04-808]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Incorporation by Reference
252:205-3-1. [AMENDED]
252:205-3-2. [AMENDED]

GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-808; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 300. LABORATORY ACCREDITATION

[OAR Docket #04-809]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 5. Laboratory Accreditation Process
252:300-5-5. [AMENDED]
Subchapter 15. Proficiency Testing
252:300-15-5. [AMENDED]

Subchapter 17. Quality Assurance/Quality Control
252:300-17-1. [AMENDED]
252:300-17-4. [AMENDED]
Subchapter 19. Classifications
252:300-19-1. [AMENDED]
252:300-19-2. [AMENDED]
252:300-19-3. [AMENDED]
Subchapter 21. Categories
252:300-21-3. [AMENDED]
252:300-21-4. [NEW]
Appendix B. Analytes for General Water Quality Laboratory Categories [REVOKED]
Appendix B. Analytes for General Water Quality Laboratory Categories [NEW]
Appendix D. Analytes for Petrolelum Hydrocarbon Laboratory Category [NEW]

GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-809; filed 5-3-04]

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

[OAR Docket #04-810]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
252:410-1-1. [AMENDED]
252:410-1-2. [AMENDED]
252:410-1-4. [AMENDED]
252:410-1-5. [AMENDED]
Subchapter 3. Radiation Machines - Common Requirements
252:410-3-7. [AMENDED]
252:410-3-33. [AMENDED]

GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-810; filed 5-3-04]

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

[OAR Docket #04-811]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 5. Certification of Industrial Radiographers
252:410-5-5. [AMENDED]
Subchapter 7. Radiation Management Authorizations; Procedures and Requirements
Part 3. Reciprocity Recognition
252:410-7-33. [AMENDED]
252:410-7-34. [AMENDED]

GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-811; filed 5-3-04]

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

[OAR Docket #04-812]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 10. ~~State Agreement~~ Radioactive Materials Program [AMENDED]

GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-812; filed 5-3-04]

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

[OAR Docket #04-813]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 15. Industrial X-ray Radiography
252:410-15-1. [AMENDED]
252:410-15-2. [AMENDED]
252:410-15-4. [AMENDED]
252:410-15-8. [NEW]
252:410-15-9. [NEW]
252:410-15-10. [NEW]

GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-813; filed 5-3-04]

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

[OAR Docket #04-814]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 20. Standards for Protection Against Radiation
252:410-20-7. [NEW]
GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-814; filed 5-3-04]

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

[OAR Docket #04-815]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 23. Notices, Instructions and Reports to Workers: Inspection and Investigations [NEW]
252:410-23-1. [NEW]
252:410-23-2. [NEW]
252:410-23-3. [NEW]
252:410-23-4. [NEW]
252:410-23-5. [NEW]
GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-815; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 605. DISCHARGE STANDARDS [REVOKED]

[OAR Docket #04-816]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 605. Discharge Standards [REVOKED]
GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-816; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION (OPDES) STANDARDS

[OAR Docket #04-817]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 606. Oklahoma Pollutant Discharge Elimination System (OPDES) Standards [NEW]
GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-817; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 616. INDUSTRIAL WASTEWATER SYSTEMS

[OAR Docket #04-818]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Introduction
252:616-1-2. [AMENDED]
Subchapter 3. Permit Procedures
252:616-3-1. [AMENDED]
Subchapter 5. General Standards
252:616-5-1. [AMENDED]
Subchapter 11. Land Application Standards
252:616-11-1. [AMENDED]
GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-818; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 641. INDIVIDUAL AND SMALL PUBLIC ON-SITE SEWAGE ~~DISPOSAL~~ TREATMENT SYSTEMS

[OAR Docket #04-819]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 641. Individual And Small Public On-site Sewage ~~Disposal~~ Treatment Systems [AMENDED]

GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-819; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 648. LAND APPLICATION OF BIOSOLIDS

[OAR Docket #04-820]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions [REVOKED]
252:648-1-1. [REVOKED]
252:648-1-2. [REVOKED]
252:648-1-3. [REVOKED]
252:648-1-4. [REVOKED]
252:648-1-5. [REVOKED]
252:648-1-5. [REVOKED]
Subchapter 3. Permitting [REVOKED]
252:648-3-1. [REVOKED]
252:648-3-2. [REVOKED]
252:648-3-3. [REVOKED]
252:648-3-4. [REVOKED]
252:648-3-5. [REVOKED]
252:648-3-6. [REVOKED]
252:648-3-7. [REVOKED]
252:648-3-8. [REVOKED]
252:648-3-9. [REVOKED]
252:648-3-10. [REVOKED]
Subchapter 5. Land Application of Biosolids [REVOKED]
252:648-5-1. [REVOKED]
252:648-5-2. [REVOKED]
252:648-5-3. [REVOKED]
252:648-5-4. [REVOKED]
252:648-5-5. [REVOKED]
Subchapter 7. Closure and Remediation [REVOKED]
252:648-7-1. [REVOKED]
GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-820; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 710. WATERWORKS AND WASTEWATER WORKS OPERATOR CERTIFICATION

[OAR Docket #04-821]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Certification
252:710-3-34. [AMENDED]
252:710-3-38. [REVOKED]
Subchapter 5. Duties and Responsibilities
252:710-5-58. [NEW]
252:710-5-59. [NEW]
GUBERNATORIAL APPROVAL:
April 16, 2004

[OAR Docket #04-821; filed 5-3-04]

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

[OAR Docket #04-843]

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]
360:10-3-20. [AMENDED]
360:10-3-24. [AMENDED]
360:10-3-25. [AMENDED]
360:10-3-26. [AMENDED]
Subchapter 5. Coverage and Limitations
Part 3. Health Benefit Plans
360:10-5-16. [AMENDED]
Part 5. Life Benefits
360:10-5-34. [AMENDED]
Part 9. Dental Benefits, Limitations, and Exclusions
360:10-5-55. [AMENDED]
360:10-5-56. [AMENDED]
360:10-5-61. [AMENDED]
Part 13. Coordination of Health and Dental Benefits
Subchapter 7. Termination of Benefits
360:10-7-1. [AMENDED]

GUBERNATORIAL APPROVAL:
April 15, 2004

[OAR Docket #04-843; filed 4-30-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-798]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
365:1-1-2. Office of the Insurance Commissioner [AMENDED]
Subchapter 9. Description of Forms and Instructions
365:1-9-1. Company licensure forms [AMENDED]
365:1-9-15.1. License renewals and reinstatements [AMENDED]
365:1-9-19. Request for Assistance and Prompt Pay ~~form~~Forms [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-798; filed 5-3-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 10. LIFE, ACCIDENT AND HEALTH

[OAR Docket #04-799]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 21. Recognition Of The 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits Regulation
365:10-21-4. 2001 CSO Mortality Table [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-799; filed 5-3-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #04-800]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
365:15-1-3. Property and casualty form filings [AMENDED]
Subchapter 7. Commercial Property and Casualty Competitive Loss Cost Rating Regulation
365:15-7-3. Property and casualty rate, loss cost and manual rule filings [AMENDED]
365:15-7-12. Resubmittal of ~~disapproved~~ filings. [AMENDED]
365:15-7-25. Multi tiering. [NEW]
Appendix B. Oklahoma Workers' Compensation Small Deductible Acceptance/Rejection Form [REVOKED]
Appendix B. Oklahoma Workers' Compensation Small Deductible Acceptance/Rejection Form [NEW]
GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-800; filed 5-3-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #04-801]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 9. Medical Professional Liability Rate Setting [NEW]
365:15-9-1. Purpose [NEW]
365:15-9-2. Severability [NEW]
365:15-9-3. Notice to policyholders [NEW]
365:15-9-4. Stenographer for hearing [NEW]
365:15-9-5. Purchasing groups [NEW]
365:15-9-6. Rating organizations [NEW]
365:15-9-7. Right to appeal [NEW]
365:15-9-8. Miscellaneous
Appendix D. Notification of Policyholders of Application for Rate Change [NEW]
GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-801; filed 5-3-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. LICENSURE OF AGENTS, ADJUSTERS, BAIL BONDSMEN, COMPANIES, PREPAID FUNERAL BENEFITS, AND VIATICAL AND LIFE SETTLEMENTS PROVIDERS AND BROKERS

[OAR Docket #04-802]

RULEMAKING ACTION:
Gubernatorial approval

RULES:

Subchapter 3. Agents, Brokers, Adjusters and Limited Representatives

365:25-3-1. Insurance agents continuing education [AMENDED]

365:25-3-17. Agriculture Revenue License [NEW]

Subchapter 7. Companies

Part 5. Oklahoma Insurance Holding Company System Regulatory Act

365:25-7-31. Adequacy of surplus [AMENDED]

Part 7. Companies In Hazardous Financial Condition

365:25-7-44. Risk-based Capital Instructions [NEW]

Part 13. ~~Required Diskettes~~ Electronic Filings

365:25-7-75. ~~Diskette~~ Electronic filings of quarterly financial statements [AMENDED]

GUBERNATORIAL APPROVAL:

April 26, 2004

[OAR Docket #04-802; filed 5-3-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 40. HEALTH MAINTENANCE ORGANIZATIONS (HMO)

[OAR Docket #04-803]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. General Provisions [NEW]

365:40-1-1. Purpose [NEW]

365:40-1-2. Definitions [NEW]

365:40-1-3. Medicaid HMOs

365:40-1-4. Severability provision [NEW]

Subchapter 3. Financial [NEW]

Part 1. HMO Forms and instructions [NEW]

365:40-3-1. Licensure forms [NEW]

365:40-3-2. Deposit of securities forms [NEW]

Part 3. Holding Company System [NEW]

365:40-3-10. Definitions [NEW]

365:40-3-11. Compliance with Article 16A of Title 36 [NEW]

365:40-3-12. Annual Registration Statements [NEW]

365:40-3-13. Transactions with affiliates [NEW]

365:40-3-14. Prior approval pursuant to 36 O.S. § 6903(C) [NEW]

365:40-3-15. Notice of amendments or modifications pursuant to 36 O.S. § 6903(C) [NEW]

365:40-3-16. Redomestication [NEW]

365:40-3-17. Forms: general requirements [NEW]

365:40-3-18. Forms: incorporation by reference, summaries and omissions [NEW]

365:40-3-19. Acquisition of control; statement filing (HMO Form A) [NEW]

365:40-3-20. Pre-acquisition notification [NEW]

365:40-3-21. Annual registration of HMOs; statement filing (HMO Form B) [NEW]

365:40-3-22. Dividend to stockholders [NEW]

365:40-3-23. Extraordinary dividends and other distributions [NEW]

365:40-3-24. Adequacy of surplus [NEW]

365:40-3-25. Failure to file [NEW]

Part 5. Miscellaneous [NEW]

365:40-3-30. Liabilities [NEW]

365:40-3-31. Name of HMO [NEW]

365:40-3-32. Standards for determining hazardous financial condition [NEW]

365:40-3-33. Commissioner's authority [NEW]

Subchapter 5. Life, Accident & Health Division and Claims and Consumer Assistance Division Rules [NEW]

Part 1. General Provisions [NEW]

365:40-5-1. Definitions [NEW]

Part 3. Rating System [NEW]

365:40-5-10. Definitions [NEW]

365:40-5-11. Community rating [NEW]

365:40-5-12. Community rating by class [NEW]

365:40-5-13. Adjusted community rating [NEW]

365:40-5-14. Rates to reflect risk-sharing arrangements [NEW]

Part 5. Basic And Supplemental Health Care Services [NEW]

365:40-5-20. Basic health care services [NEW]

365:40-5-21. Supplemental health care services [NEW]

365:40-5-22. Benefit changes [NEW]

365:40-5-23. Identification cards [NEW]

Part 7. Point Of Service Option [NEW]

365:40-5-30. Definitions [NEW]

365:40-5-31. Purpose/scope [NEW]

365:40-5-32. Responsibilities of the HMO [NEW]

Part 9. HMO Requirements And Prohibitions [NEW]

365:40-5-40. Services to members [NEW]

365:40-5-41. Membership [NEW]

365:40-5-42. Individual conversion contracts [NEW]

365:40-5-43. Premiums/co-payments [NEW]

365:40-5-44. Internal grievance system [NEW]

365:40-5-45. Guaranteed renewal [NEW]

365:40-5-46. Small group offering [NEW]

365:40-5-47. Special enrollment periods [NEW]

Part 11. Coordination Of Benefits [NEW]

365:40-5-50. Purpose [NEW]

365:40-5-51. Definitions [NEW]

365:40-5-52. Effect on benefits [NEW]

365:40-5-53. Right to receive and release necessary information [NEW]

365:40-5-54. Benefit payments [NEW]

365:40-5-55. Subrogation [NEW]

365:40-5-56. Small claim waivers [NEW]

365:40-5-57. Public education [NEW]

365:40-5-58. Retroactivity [NEW]

365:40-5-59. Facility of payment [NEW]

365:40-5-60. Right of recovery [NEW]

Part 13. Termination Of Members, Providers and Continuation of Benefits [NEW]
365:40-5-70. Termination of group or individual contracts [NEW]
365:40-5-71. Termination of providers [NEW]
365:40-5-72. Continuation of benefits [NEW]
365:40-5-73. Disenrollment for cause [NEW]
365:40-5-74. Certification of creditable coverage [NEW]
Part 15. Discontinuation of HMO [NEW]
365:40-5-80. Notice [NEW]
365:40-5-81. Individual market [NEW]
365:40-5-82. Group market [NEW]
365:40-5-83. Market reentry [NEW]
Part 17. Confidentiality of Medical Information and Liability [NEW]
365:40-5-90. Responsibility of HMO [NEW]
Part 19. Request For Assistance and Prompt Pay Form [NEW]
365:40-5-100. Request for assistance [NEW]
365:40-5-101. Prompt Pay Form and Requirements [NEW]
Part 21. Geographic Service Area Variations [NEW]
365:40-5-110. Accessibility of providers [NEW]
365:40-5-111. Marketing and enrolling [NEW]
365:40-5-112. Geographic area filings [NEW]
Part 23. Reimbursement of Claims [NEW]
365:40-5-120. Purpose [NEW]
365:40-5-121. Requirement to reimburse claims for point of service [NEW]
365:40-5-122. Responsibilities [NEW]
365:40-5-123. Reimbursement criteria [NEW]
310:40-5-124. Claims payment report [NEW]
365:40-5-125. Elements of a clean claim [NEW]
365:40-5-126. Disclosure requirements [NEW]
365:40-5-127. Disclosure of processing procedures [NEW]
365:40-5-128. Failure to promptly pay [NEW]
365:40-5-129. Date of claim receipt [NEW]
365:40-5-130. Terms of contracts [NEW]
Appendix A. HMO Form A [NEW]
Appendix B. HMO Form B [NEW]
Appendix C. HMO Form C [NEW]
Appendix D. HMO Form D [NEW]
Appendix E. HMO Form E [NEW]
Appendix F. HMO Form R [NEW]
Appendix G. Prompt Pay Form [NEW]

GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-803; filed 5-3-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 1. ADMINISTRATION

[OAR Docket #04-846]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 5. Procedure in Individual Administrative Proceedings
450:1-5-14 [AMENDED]
450:1-5-15 [REVOKED]
Subchapter 9. Certification and Designation of Facilities and Services
450:1-9-7 [AMENDED]
450:1-9-12 [AMENDED]

GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-846; filed 5-5-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 15. CONSUMER RIGHTS

[OAR Docket #04-847]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
450:15-1-1 [AMENDED]
450:15-1-2 [AMENDED]
Subchapter 3. Consumer Rights
Part 1. ~~Inpatient~~ Mental Health and Drug or Alcohol Abuse Services Consumer Bill of Rights
450:15-3-1 [AMENDED]
450:15-3-2 [AMENDED]
450:15-3-3 [AMENDED]
450:15-3-4 [REVOKED]
450:15-3-5 [REVOKED]
450:15-3-6 [AMENDED]
450:15-3-8 [AMENDED]
450:15-3-9 [AMENDED]
450:15-3-10 [AMENDED]
450:15-3-11 [AMENDED]
450:15-3-12 [AMENDED]
450:15-3-14 [AMENDED]
450:15-3-15 [REVOKED]
450:15-3-16 [AMENDED]
450:15-3-17 [REVOKED]
450:15-3-18 [AMENDED]
450:15-3-21 [AMENDED]

450:15-3-23.1 [NEW]
450:15-3-25 [AMENDED]
450:15-3-27 [AMENDED]
450:15-3-28 [NEW]
Part 3. ~~Inpatient Mental Health~~ Consumer Grievance Procedure
450:15-3-45 [AMENDED]
Part 7. Consumer Access to Health Information, Facilities Operated by ODMHSAS
Part 9. Client Rights, Domestic Violence, Batterer's Intervention Sexual Assault Programs and Shelters [NEW]
450:15-3-70 [NEW]
450:15-3-71 [NEW]
450:15-3-72 [NEW]
450:15-3-73 [NEW]
Part 11. Resident Rights, Mental Health Residential Care Facilities [NEW]
450:15-3-80 [NEW]
450:15-3-81 [NEW]
450:15-3-82 [NEW]
450:15-3-83 [NEW]
450:15-3-84 [NEW]
450:15-3-85 [NEW]
Subchapter 9. Consumer Rights, Non-Inpatient Services
450:15-9-1 [REVOKED]
450:15-9-2 [REVOKED]
450:15-9-3 [REVOKED]
450:15-9-4 [REVOKED]
450:15-9-5 [REVOKED]
450:15-9-7 [REVOKED]

GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-847; filed 5-5-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 18. STANDARDS AND CRITERIA FOR ~~SUBSTANCE ABUSE SERVICES~~ ALCOHOL AND DRUG TREATMENT PROGRAMS

[OAR Docket #04-848]

RULEMAKING ACTION:
Gubernatorial approval

PROPOSED RULES:
Subchapter 1. General Provisions
450: 18-1-7 [REVOKED]
Subchapter 3. Substance Abuse Treatment Services
Part 1. Levels of Care
Part 25. Opioid Treatment Programs and Opiate Antagonists and Agonists
450: 18-3-241 [AMENDED]
Subchapter 7. Facility Record System
Part 1. ~~Facility~~ Record System
450: 18-7-3 [REVOKED]
450: 18-7-3.1 [NEW]
Part 7. Case Management
450: 18-7-63 [NEW]
Part 15. Other Case Record Materials
450: 18-7-143 [AMENDED]
Subchapter 11. Consumer Rights
450: 18-11-1 [AMENDED]
450: 18-11-2 [AMENDED]
450: 18-11-3 [AMENDED]

GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-848; filed 5-5-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 19. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

[OAR Docket #04-849]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 11. Client Rights
450:19-11-1 [AMENDED]
450:19-11-2 [AMENDED]
450:19-11-3 [AMENDED]

GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-849; filed 5-5-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 21. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND ~~INSTRUCTORS~~ FACILITATORS

[OAR Docket #04-850]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and ~~Instructors~~ Facilitators
450:21-1-1 [AMENDED]

450:21-1-2 [AMENDED]
450:21-1-3 [AMENDED]
450:21-1-5 [AMENDED]
450:21-1-6 [AMENDED]
450:21-1-7 [AMENDED]
450:21-1-7.2 [AMENDED]
450:21-1-8 [AMENDED]
450:21-1-10 [AMENDED]
450:21-1-11 [AMENDED]
450:21-1-13 [AMENDED]
450:21-1-14 [AMENDED]
Subchapter 3. Certification Denial or Sanctions
450:21-3-1 [AMENDED]
450:21-3-2 [AMENDED]
450:21-3-3 [AMENDED]
Subchapter 5. Course Attendance and Completion
450:21-5-1 [AMENDED]
450:21-5-2 [AMENDED]

GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-850; filed 5-5-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 22. CERTIFICATION OF ALCOHOL AND DRUG ASSESSMENT AND ~~EVALUATION PROGRAMS~~ EVALUATIONS RELATED TO DRIVER'S LICENSE REVOCATION

[OAR Docket #04-851]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
450:22-1-1.1 [AMENDED]
450:22-1-3 [AMENDED]
450:22-1-6 [AMENDED]
450:22-1-8 [AMENDED]
450:22-1-10 [AMENDED]
450:22-1-11 [AMENDED]
450:22-1-15 [AMENDED]

GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-851; filed 5-5-04]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #04-767]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Pharmacists
535:10-3-1.2. [AMENDED]

GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-767; filed 4-30-04]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 15. PHARMACIES

[OAR Docket #04-768]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Pharmacies
535:15-3-2. [AMENDED]
535:15-3-21. [AMENDED]
Subchapter 5. Hospital Pharmacies
535:15-5-1. [AMENDED]
535:15-5-2. [AMENDED]
535:15-5-7. [AMENDED]
535:15-5-7.3. [AMENDED]
535:15-5-7.4. [AMENDED]
535:15-5-7.5. [AMENDED]
Subchapter 13. Pharmacy Technicians and Supportive Personnel
535:15-13-1. [AMENDED]
535:15-13-3. [AMENDED]
535:15-13-4. [AMENDED]
535:15-13-5. [AMENDED]
535:15-13-6. [AMENDED]
535:15-13-7. [AMENDED]
535:15-13-8. [AMENDED]
535:15-13-9. [AMENDED]
535:15-13-10. [AMENDED]
535:15-13-12. [AMENDED]
535:15-13-13. [AMENDED]

GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-768; filed 4-30-04]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, PACKAGERS AND WHOLESALERS

[OAR Docket #04-769]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-2 [AMENDED]
535:20-9-3 [AMENDED]
535:20-9-4 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-769; filed 4-30-04]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 25. RULES AFFECTING VARIOUS REGISTRANTS

[OAR Docket #04-770]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Applicants, Registrants, and Applications
535:25-3-3. [AMENDED]
Subchapter 7. Rules of Registrant Conduct
535:25-7-3. [AMENDED]
Subchapter 9. Violations of the Rules of Registrant Conduct
535:25-9-3. [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2004

[OAR Docket #04-770; filed 4-30-04]

TITLE 570. STATE BOARD FOR PROPERTY AND CASUALTY RATES
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-804]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Rules
570:1-1-2. Definitions [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2004

[OAR Docket #04-804; filed 5-3-04]

TITLE 570. STATE BOARD FOR PROPERTY AND CASUALTY RATES
CHAPTER 10. FILING PROCEDURES, INTERPRETATIONS AND ADDITIONAL BOARD RULES

[OAR Docket #04-805]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
570:10-1-2. Definitions [AMENDED]
570:10-1-3. Filing procedure for rates, loss costs, rating plans, schedules, manuals and revisions thereto [AMENDED]
570:10-1-7. Automatic rate revisions [AMENDED]
570:10-1-10. Fidelity and surety filings [REVOKED]
570:10-1-38. Waiver of premium [NEW]
570:10-1-39. Multi tiering [NEW]
570:10-1-40. Resubmittal of rejected filings [NEW]
GUBERNATORIAL APPROVAL:
April 23, 2004

[OAR Docket #04-805; filed 5-3-04]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-790]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Program Divisions within the Department
612:1-5-2. Division of Vocational Rehabilitation (DVR) [AMENDED]
612:1-5-4.1. Management Services Division (MSD) [AMENDED]
Subchapter 9. Compliance With Section 504 of the Rehabilitation Act of 1973
612:1-9-3. Required statement on DRS printed documents [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2004

[OAR Docket #04-790; filed 5-3-04]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 3. MANAGEMENT SERVICES DIVISION

[OAR Docket #04-791]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
612:3-1-3. Functions of the division [AMENDED]
Subchapter 5. Policy Development and Program Standards
Part 3. Policy Development
612:3-5-13. Drafting of new or revised policy [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2004

[OAR Docket #04-791; filed 5-3-04]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. ~~REHABILITATIVE~~VOCATIONAL REHABILITATION AND VISUAL SERVICES

[OAR Docket #04-792]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 10. Vocational ~~Rehabilitative~~ Rehabilitation and Visual Services [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2004

[OAR Docket #04-792; filed 5-3-04]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 20. SPECIAL SCHOOLS

[OAR Docket #04-793]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 2. Contracted Instructional Personnel
612:20-2-1. Purpose [AMENDED]
612:20-2-13. Dismissal/Nonreemployment Hearing [AMENDED]
612:20-2-17. Full-time administrators; Appeal of dismissal or nonreemployment [AMENDED]
612:20-2-31. Reduction in Force for Contracted Instructional Personnel [NEW]
GUBERNATORIAL APPROVAL:
April 23, 2004

[OAR Docket #04-793; filed 5-3-04]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-783]

RULEMAKING ACTION:
Gubernatorial approval.
RULES:
675:1-1-1.1. Definitions [NEW]
675:1-1-3. Makeup of Board [AMENDED]
675:1-1-4. Officers of the Board [AMENDED]
675:1-1-5. Executive Secretary [REVOKED]
675:1-1-8. Meeting dates [AMENDED]
675:1-1-9. Fee schedule [NEW]
GUBERNATORIAL APPROVAL:
April 22, 2004

[OAR Docket #04-783; filed 4-30-04]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS CHAPTER 3. INDIVIDUAL PROCEEDINGS

[OAR Docket #04-784]

RULEMAKING ACTION:
Gubernatorial approval.
RULES:
675:3-1-1. Purpose [NEW]
675:3-1-2. Definitions [NEW]
675:3-1-3. Complaint procedure [NEW]
675:3-1-4. procedures for denials, revocations, suspensions [NEW]
GUBERNATORIAL APPROVAL:
April 22, 2004

[OAR Docket #04-784; filed 4-30-04]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 10. LICENSURE REQUIREMENTS

[OAR Docket #04-785]

RULEMAKING ACTION:
Gubernatorial approval.
RULES:
Chapter 10. Licensure Requirements [AMENDED]
GUBERNATORIAL APPROVAL:
April 22, 2004

[OAR Docket #04-785; filed 4-30-04]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 12. GUIDELINES FOR SUPERVISION

[OAR Docket #04-786]

RULEMAKING ACTION:
Gubernatorial approval.
RULES:
675:12-1-2. Supervision and the Licensed Social Work Associate [AMENDED]
675:12-1-3. Supervision and the Licensed Social Worker [REVOKED]
675:12-1-4. Supervision and specialty certification [AMENDED]
675:12-1-5. Supervision and specific licensure [REVOKED]
675:12-1-6. Minimum supervision expectations [AMENDED]
675:12-1-7. Requirements for Board Approved Supervisor [REVOKED]
GUBERNATORIAL APPROVAL:
April 22, 2004

[OAR Docket #04-786; filed 4-30-04]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 15. GUIDELINES FOR CONTINUING EDUCATION

[OAR Docket #04-787]

RULEMAKING ACTION:
Gubernatorial approval.
RULES:
675:15-1-2. Introduction [AMENDED]
675:15-1-3. Continuing education standards [AMENDED]
675:15-1-4. Content of continuing education learning activities [AMENDED]
675:15-1-5. Information to providers of continuing education [AMENDED]
675:15-1-6. Suggested criteria for accepting category I and II continuing education events [REVOKED]
GUBERNATORIAL APPROVAL:
April 22, 2004

[OAR Docket #04-787; filed 4-30-04]

TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS
CHAPTER 10. LICENSURE OF VETERINARIANS, VETERINARY TECHNICIANS AND ANIMAL EUTHANASIA TEHNICIANS

[OAR Docket #04-760]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Licensure of Veterinarians
775:10-3-12. [AMENDED]
GUBERNATORIAL APPROVAL:
April 15, 2004

[OAR Docket #04-760; filed 4-26-04]

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

[OAR Docket #04-852]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Antidegradation Requirements
785:45-3-2. Applications of Antidegradation policy [AMENDED]
Subchapter 5. Surface Water Quality Standards
Part 3. Beneficial Uses and Criteria to Protect Uses
785:45-5-9. General narrative criteria [NEW]
785:45-5-13. Agriculture: livestock and irrigation [AMENDED]
785:45-5-16. Primary Body Contact Recreation [AMENDED]
785:45-5-17. Secondary Body Contact Recreation [AMENDED]
785:45-5-19. Aesthetics [AMENDED]
Appendix A. Designated Beneficial Uses for Surface Waters [REVOKED]

Appendix A. Designated Beneficial Uses for Surface Waters [NEW]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [REVOKED]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [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]
Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]
Appendix G. Numerical Criteria to Protect Beneficial Uses [NEW]

GUBERNATORIAL APPROVAL:
April 23, 2004

[OAR Docket #04-852; filed 5-6-04]

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

OAR Docket #04-853

RULEMAKING ACTION:
Gubernatorial appproval

RULES:
Subchapter 1. General Provisions
785:46-1-2. Definitions [AMENDED]
Subchapter 5. Implementation Of Numerical Criteria To Protect Fish And Wildlife From Toxicity Due To Conservative Substances
785:46-5-8. pH and hardness dependent toxicity [AMENDED]
Subchapter 7. Implementation of Numerical Criteria to Protect Human Health from Toxicity Due to Conservative Substances
785:46-7-1. Applicability and scope [AMENDED]
Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use
785:46-9-5. Reasonable potential [AMENDED]
Subchapter 11. Implementation of Temperature Criteria to Protect Fish and Wildlife Propagation
785:46-11-2. Applicable temperatures [AMENDED]
Subchapter 15. Use Support Assessment Protocols
785:46-15-1. Scope and applicability [AMENDED]
785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]
785:46-15-6. Assessment of Primary Body Contact Recreation support [AMENDED]
785:46-15-7. Assessment of Public and Private Water Supply support [AMENDED]
785:46-15-10. Nutrients [AMENDED]
785:46-15-11. Assessment of Hydroelectric Power Generation support [NEW]
785:46-15-12. Assessment of Industrial and Municipal Process and Cooling Water support [NEW]
785:46-15-13. Assessment of Navigation support [NEW]

GUBERNATORIAL APPROVAL:
April 23, 2004

[OAR Docket #04-853; filed 5-6-04]

Gubernatorial Disapprovals

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

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

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-775]

RULEMAKING ACTION:

Gubernatorial Disapproval

RULES:

Chapter 1. Administrative Operations [AMENDED]

GUBERNATORIAL DISAPPROVAL:

Failure of the Governor to approve the rule(s) within 45 calendar days after submission resulted in disapproval on April 9, 2008.

[OAR Docket #04-775; filed 4-30-04]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 10. CRIME VICTIMS COMPENSATION PROGRAM

[OAR Docket #04-776]

RULEMAKING ACTION:

Gubernatorial Disapproval

RULES:

Chapter 10. Crime Victims Compensation Program [AMENDED]

GUBERNATORIAL DISAPPROVAL:

Failure of the Governor to approve the rule(s) within 45 calender days after submission resulted in disapproval on April 9, 2008.

[OAR Docket #04-776; filed 4-30-04]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 15. SEXUAL ASSAULT EXAMINATION FUND

[OAR Docket #04-777]

RULEMAKING ACTION:

Gubernatorial Disapproval

RULES:

Chapter 15. Sexual Assault Examination Fund [AMENDED]

GUBERNATORIAL DISAPPROVAL:

Failure of the Governor to approve the rule(s) within 45 calender days after submission resulted in disapproval on April 9, 2008.

[OAR Docket #04-777; filed 4-30-04]

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 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-778]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
WITHDRAWN RULES:
Chapter 1. Administrative Operations [AMENDED]
DATES:
Adoption:
February 20, 2004
Submitted to Governor:
February 23, 2004
Submitted to House:
February 23, 2004
Submitted to Senate:
February 23, 2004
Gubernatorial Disapproval:
April 9, 2004
Withdrawn:
April 23, 2004

[OAR Docket #04-778; filed 4-30-04]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 10. CRIME VICTIMS COMPENSATION PROGRAM

[OAR Docket #04-779]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
WITHDRAWN RULES:
Chapter 10. Crime Victims Compensation Program [AMENDED]
DATES:
Adoption:
February 20, 2004
Submitted to Governor:
February 23, 2004
Submitted to House:
February 23, 2004
Submitted to Senate:
February 23, 2004
Gubernatorial Disapproval:
April 9, 2004
Withdrawn:
April 23, 2004

[OAR Docket #04-779; filed 4-30-04]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 15. SEXUAL ASSAULT EXAMINATION FUND

[OAR Docket #04-780]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
WITHDRAWN RULES:
Chapter 15. Sexual Assault Examination Fund [AMENDED]
DATES:
Adoption:
February 20, 2004
Submitted to Governor:
February 23, 2004
Submitted to House:
February 23, 2004
Submitted to Senate:
February 23, 2004
Gubernatorial Disapproval:
April 9, 2004
Withdrawn:
April 23, 2004

[OAR Docket #04-780; filed 4-30-04]

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 55. BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS AND LANDSCAPE ARCHITECTS OF OKLAHOMA CHAPTER 10. LICENSURE AND PRACTICE OF ARCHITECTS AND LANDSCAPE ARCHITECTS

[OAR Docket #04-765]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Administrative Operations
55:10-3-13. Fees and penalties [AMENDED]
AUTHORITY:
The Board of Governors of Licensed Architects and Landscape Architects of Oklahoma; 59 Oklahoma Statutes, Section 46.1, et seq.
DATES:
Comment period:
January 15, 2004 - February 16, 2004
Public hearing:
February 18, 2004
Adoption:
February 18, 2004
Submitted to Governor:
February 26, 2004
Submitted to House:
February 26, 2004
Submitted to Senate:
February 26, 2004
Gubernatorial approval:
April 6, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 21, 2004.
Final adoption:
April 21, 2004
Effective:
June 11, 2004
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments decrease the biennial registration fees currently paid by out-of-state registrants ($250.00) to the level paid by in-state registrants ($200.00). The proposed amendments also decrease the Certificate of Authority application/revision fee charged to out-of-state applicants to match the fee currently charged to in-state applicants ($75.00). The proposed rule amendments also clarify the CE reinstatement penalty. Currently, a reinstatement penalty of $500.00 per year must be paid. However, reinstatements are determined biennially and therefore the applicant for reinstatement must pay $1,000. The language has been modified to clarify the amount due for reinstatement. **The proposed amendments are not intended to increase fees and will have no impact on small businesses or others.**
CONTACT PERSON:
Jean Williams, Executive Director and Liaison, P.O. Box 53430, Oklahoma City, Oklahoma 73152, 405-949-2383

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 11, 2004:

SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS

55:10-3-13. Fees and penalties

(a) Schedule of fees and penalties are as follows:
(1) Initial registration and subsequent biennial fee -- $ 200.00 ~~(in-state, $250.00 out-of-state)~~
(2) Reciprocal license application fee -- $ 100.00
(3) Examination & Retake application fee -- $ 75.00
(4) Examination -- Actual Cost
(5) Late payment penalty -- $ 25.00
(6) Returned (insufficient funds) check fee -- $ 25.00
(7) Reinstatement penalty -- $ 100.00
(8) Certificate of Authority application/revision -- $ 75.00 ~~(in-state, $100.00 out-of-state)~~
(9) Duplicate certificate -- $ 20.00
(10) Roster -- $ .25 per page
(11) Transcript of hearing -- Actual Cost
(12) Copy of public records -- $ .25 per page
(13) Emeritus license -- All fees waived
(14) CE reinstatement penalty -- $1,000.00 ~~$500.00 (per year of noncompliance)~~
(15) Civil penalties -- Set by the Act
(16) Manual processing fee -- $25.00 per transaction

(b) CE reinstatement penalties are in addition to any other reinstatement penalties under these Chapter 10 Rules.

[OAR Docket #04-765; filed 4-28-04]

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

[OAR Docket #04-822]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

252:100-5-2.1 [AMENDED]
252:100-5-2.2 [AMENDED]
Subchapter 7. Permits for Minor Facilities
Part 1. General Provisions
252:100-7-1.1 [AMENDED]
252:100-7-2 [AMENDED]
Part 2. Permit Application Fees
252:100-7-3 [AMENDED]
Part 3. Construction Permits
252:100-7-15 [AMENDED]
Part 4. Operating Permits
252:100-7-18 [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:
March 17, 2003 through April 15, 2003
June 16, 2003 through July 16, 2003
September 2, 2003 through October 8, 2003
December 15, 2003 through January 14, 2004
February 27, 2004
Public hearing:
April 15, 2003, July 16, 2003, October 8, 2003, January 14, 2004, and February 27, 2004
Adoption:
February 27, 2004
Submitted to Governor:
March 5, 2004
Submitted to House:
March 5, 2004
Submitted to Senate:
March 5, 2004
Gubernatorial approval:
April 16, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2004
Final adoption:
April 28, 2004
Effective:
June 11, 2004

SUPERSEDED EMERGENCY ACTIONS:
None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:
The Department proposes to establish a new Permit Exempt Facility category. The revision creates a Permit Exempt Facility category for facilities with actual emissions of 40 tpy or less of each regulated air pollutant emitted and potential emissions less than the threshold levels for PSD and Title V. Facilities that qualify for this category will be exempt from the requirements to obtain air quality permits, to pay annual operating fees, and to submit annual emission inventories. These facilities, however, will remain subject to all other applicable State and Federal air quality rules and regulations. The revisions necessary to accomplish this include changes to OAC 252:100-5 Registration, Emission Inventory and Annual Operating Fees and OAC 252:100-7 Permits for Minor Facilities.

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 11, 2004:

SUBCHAPTER 5. REGISTRATION, EMISSION INVENTORY AND ANNUAL OPERATING FEES

252:100-5-2.1. Emission inventory

(a) **Requirement to file an emission inventory.** The owner or operator of any facility that is a source of air emissions shall submit a complete emission inventory annually on forms obtained from the Division.

(1) **General requirements.** The inventory shall cover operations during a calendar year and shall be submitted prior to March 1 of the following year, unless ~~a 30-day extension has been granted by the Division~~ the Division has granted a 30-day extension. An additional 30-day extension may be granted for good cause shown.

(2) **Permit by rule.** ~~Facilities~~ The owner or operator of a facility registered under a permit by rule as outlined in Subchapter 7 and emitting 5 tons per year or less of each regulated air pollutant ~~are~~ is required to submit an emission inventory for that facility once every 5 years. The inventory shall cover operations during the last year of each 5-year period and be submitted by March 1 of the following year.

(3) **Permit exempt facilities and de minimis facilities.** ~~De minimis facilities as defined in 252:100-7-1.1~~ The owners or operators of permit exempt facilities or de minimis facilities, as these terms are defined in OAC 252:100-7-1.1, are not required to submit an annual emission inventory.

(4) **Special inventories.** Upon request by the Director, the owner or operator of a facility that emits or has the potential to emit any regulated air pollutant shall file an emission inventory with the Division. The Director is authorized to request this inventory when emission related data is necessary for program planning or compliance with State or Federal rules, regulations, standards, or requirements.

(b) **Content.** All inventories submitted to the Division shall include, but shall not be limited to, the following:

(1) For those emissions subject to a permit, the permit number and the permitted allowable emissions as set forth therein.

(2) The amount of the actual emissions, including quantifiable excess emissions, and the basis for such determination.

(3) If the actual emissions vary from the allowable or from the previous year's actual by more than 30%, an explanation for the difference.

(4) For those emissions not the subject of a permit and when requested by the AQD, a list of all OAC 252:100 rules setting forth emission limitations applicable to the facility in question and the maximum yearly allowable for the facility.

(c) **Documentation.** All calculations and assumptions must be verified by proper documentation. All supporting data, including actual production, throughput and measurement records along with engineering calculations and other data utilized in accordance with OAC 252:100-5-2.1(d), below, must

be maintained for at least 5 years by the current owner or operator at the facility in conjunction with facility records of the emission inventory. This information must either be submitted to the Division or made available for inspection upon request.

(d) **Method of calculation.** The best available data at the time the emission inventory is or should have been prepared shall be used to determine emissions. It shall be the burden of the owner or operator to select the best available data, based on an acceptable method of calculation. The method of calculation used to determine emissions shall be binding upon the owner or operator and the Division for the purpose of calculating fees under OAC 252:100-5-2.2 unless challenged by the owner or operator prior to September 1 of the year the inventory is due or by the Division within six (6) months after the date the inventory is received. Acceptable methods of calculation for determining actual emissions are:

(1) Emission factors utilized in the issuance of a ~~relevant~~ currently applicable Oklahoma Air Quality permit(s) for the facility.

(2) Stack tests using appropriate EPA test methods, with advance notification and opportunity for observation by the ~~Air Quality~~ Division.

(3) Stack tests using appropriate EPA test methods may be used for determining the emissions of identical equipment (i.e., same model, same location, and same operating conditions and parameters) when:

(A) Tests are performed by persons qualified by training and experience to perform said tests.

(B) Copies of the tests results and methods are available for review by the ~~Air Quality~~ Division.

(4) Continuous emissions monitoring data, when supported by required certification and calibration data.

(5) Current AP-42 factors or other factors acceptable to the Division.

(6) Manufacturer's test data, when approved by the Division as reliable.

(7) EPA and EPA-contracted industry-specific emission study data when it can be shown to be applicable to the facility in question and approved for use in the emission inventory by the Division.

(8) Fuel usage and other mass-balance methods when supported by specific records applicable to the materials on which the calculations are based and approved for use in the emission inventory by the Division.

(9) Any other method that can be shown to be reasonably accurate when supported by engineering data and calculations, and approved for use in the emission inventory by the Division.

(e) **Methods of verification.** Emission inventories determined by the Division to be substantially incomplete or substantially incorrect shall, upon the request of the Division, be subject to verification if not satisfactorily completed or corrected within a reasonable time. Verification shall be accomplished by an appropriate stack test using EPA approved methods, installation of continuous monitoring equipment, or other methods acceptable to the Division.

(f) **Certification.** The emission inventory shall contain certification by a responsible official of the truth, accuracy, and completeness of the document. This certification 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."

252:100-5-2.2. Annual operating fees

(a) **Applicability.**

(1) ~~This Section~~ OAC 252:100-5-2.2 applies to all facilities that are sources of air pollution, including government facilities, regardless of whether the source is currently permitted or whether an emission inventory has or has not at any time been submitted for the facility. The owners or operators of Part 70 sources shall pay annual fees that are sufficient to cover the Part 70 program costs. The permitting authority shall ensure that the fees required by OAC 252:100-5-2.2(b)(2) will be used solely for Part 70 program costs.

(2) ~~This Section~~ OAC 252:100-5-2.2 does not apply to de minimis facilities or to permit exempt facilities.

(b) **Fee schedule.**

(1) **Minor facilities.**

~~(A) Until January 1, 1998, the owner or operator of a facility subject to this Section shall pay an annual operating fee based on annual emissions of regulated pollutants (for fee calculation), in accordance with the following fee schedule:~~

~~(i) 10 - 24.99 tpy - $100/year~~
~~(ii) 25 - 49.99 tpy - $250/year~~
~~(iii) 50 - 74.99 tpy - $500/year~~
~~(iv) 75 - 99.99 tpy - $750/year~~

~~(B) In calendar year 1998, annual operating fees shall be invoiced at $10 per ton of regulated pollutant (for fee calculation).~~

(~~C~~A) Beginning January 1, 1999, annual operating fees shall be invoiced at $17.12 per ton of regulated pollutant (for fee calculation).

(~~D~~B) Beginning January 1, 2003, annual operating fees shall be no more than $22.28 per ton of regulated pollutant (for fee calculation).

(2) **Part 70 Sources.**

(A) From January 1, 1995, until January 1, 1999, the annual operating fee for Part 70 sources shall be $15.19 per ton of regulated pollutant (for fee calculation).

(B) Beginning January 1, 1999, the annual operating fee for Part 70 sources shall be $17.12 per ton of regulated pollutant (for fee calculation).

(C) Beginning January 1, 2003, the annual operating fee for Part 70 sources shall be no more than $22.28 per ton of regulated pollutant (for fee calculation).

(D) The annual operating fee shall be adjusted automatically each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year differs from the Consumer Price Index for the calendar year 1994. The Consumer Price

Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the twelve-month period ending on August 31 of each calendar year.

(c) **Payment.**

(1) Fees are due and payable on the invoice due date(s). Fees shall be considered delinquent 30 days after the invoice due date(s). Within five (5) years but not before a grace period of 120 days from the invoice due date, the DEQ may issue an administrative order to recover such fees and may assess a reasonable administrative fine in accordance with the provisions of the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*, to an owner or operator of a facility who has failed to pay or has underpaid such fees.

(2) If an owner or operator has failed to submit the required annual emission inventory, the DEQ may issue an administrative order to recover fees that would have been invoiced had the emission inventory been submitted when due. The DEQ may issue such order within five (5) years from the date of billing and may assess a reasonable administrative fine in accordance with the provisions of the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*

(3) When a fee overpayment has been made as a result of an error, an owner or operator may seek a credit for such fee overpayment within five years from the date on which payment of the fee was received by the DEQ.

(d) **Basis for annual operating fees.**

(1) Operating fees shall be calculated on a source-specific basis and based on actual emissions of regulated pollutants (for fee calculation) as set forth in the facility emission inventory unless the owner or operator elects to pay fees on allowable emissions.

(2) Regulated pollutants (for fee calculation) in excess of 4,000 tons per year per pollutant for a Part 70 source shall not be considered in the calculation of the annual fee.

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART 1. GENERAL PROVISIONS

252:100-7-1.1. Definitions

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

"Actual emissions" means the total amount of regulated air pollutants emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

"Best Available Control Technology" or **"BACT"** means the best control technology that is currently available as determined by the ~~Division~~ Director on a ~~case by case~~ case-by-case basis, taking into account energy, environmental, and economic impacts and other costs.

"Commence" means, as applied to the construction or modification of a minor facility to which neither a NSPS or NESHAP applies, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

"De minimis facility" means a facility that meets the requirements contained in paragraphs (A) and (B) of this definition.

(A) ~~Is~~ All the air pollutant emitting activities at the facility are on the de minimis list contained in Appendix H or the facility meets all of the following de minimis criteria:

(i) ~~Has~~ The facility has actual emissions of ~~five (5) tons per year~~ 5 tpy or less of each regulated air pollutant, except ~~Total Suspended Particulates (TSP).~~ that fraction of particulate matter that exhibits an aerodynamic particulate diameter of more than 10 micrometers (μm).

(ii) ~~Is~~ The facility is not a "major source" as defined in OAC 252:100-8-2.

(iii) ~~Is~~ The facility is not a "major stationary source" as defined in OAC 252:100-8-31 for facilities in attainment areas.

(iv) ~~Is~~ The facility is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas.

(v) ~~Is~~ The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(vi) The facility has not opted to obtain or retain an Air Quality Division permit.

(B) ~~Is~~ The facility is not subject to the ~~federal~~ Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63).

~~(C) Is not subject to the NESHAP (40 CFR Parts 61 and 63).~~

"Facility" means all of the pollutant-emitting activities that meet all the following conditions:

(A) Are under common control.

(B) Are located on one or more contiguous or adjacent properties.

(C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

"Hazardous Air Pollutant" or **"HAP"** means any hazardous air pollutant regulated under Section 112 of the ~~federal~~ Federal Clean Air Act, 42 U.S.C. Section 7412, and subject to NESHAP.

"Minor facility" means a facility which is not a Part 70 source.

"National Emission Standards for Hazardous Air Pollutants" or **"NESHAP"** means those standards as published by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to Section 112 of the Federal Clean Air Act, 42 U.S.C. Section 7412.

"New portable source" means a portable source that has never operated within the State of Oklahoma. This includes

sources that are initially constructed and existing facilities that are relocating into Oklahoma from another state.

"New Source Performance Standards" or **"NSPS"** means those standards found in 40 CFR Part 60.

"Permit exempt facility" means a facility that:

(A) has actual emissions in every calendar year that are 40 tpy or less of each regulated air pollutant;

(B) is not a de minimis facility as defined in OAC 252:100-7-1.1;

(C) is not a "major source" as defined in OAC 252:100-8-2 for Part 70 sources;

(D) is not a "major stationary source" as defined in OAC 252:100-8-31 for PSD facilities in attainment areas;

(E) is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas;

(F) is not operated in conjunction with another facility or source that is subject to air quality permitting;

(G) is not subject to an emission standard, equipment standard, or work practice standard in the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63); and

(H) is not subject to the requirements of OAC 252:100-39-47.

"Portable source" means a source with design and intended use to allow disassembly or relocation.

"Relocate" means to move a source from one geographical location to another. The term does not include minimal moves within the facility boundaries.

"Regulated ~~Air Pollutant~~ air pollutant" means:

(A) Any Volatile Organic Compound (VOC), as that term is defined in OAC 252:100-1-3, 252:100-37-2, or 252:100-39-2.

(B) Any pollutant regulated under section 111 or 112 (except 112(r)) of the Federal Clean Air Act.

(C) Any pollutant for which a national primary ambient air quality standard has been promulgated under the Federal Clean Air Act.

(D) Any Toxic Air Contaminant as defined and regulated under OAC 252:100-41-2.

(E) Any other substance for which an air emission limitation or equipment standard is set by permit or rule.

252:100-7-2. Requirement for permits for minor facilities

(a) **Permit required.** Except as provided in ~~this section~~ OAC 252:100-7-2, no person may commence construction or modification of any minor facility, may operate any new minor facility, or may relocate any minor portable source without obtaining a permit from the DEQ. For additional application and permitting procedures, see ~~the Uniform Permitting Rules, OAC 252:2-15~~ OAC 252:4, Subchapter 7 Environmental Permit Process.

~~(b) **Exception for de minimis facilities.** De minimis facilities are exempted from the permitting requirements of OAC 252:100-7. De minimis facilities remain subject only to the following air quality control rules:~~

(b) **Exceptions.**

(1) **De minimis facilities.** De minimis facilities are exempted from the permitting requirements of OAC 252:100-7. De minimis facilities remain subject only to the following air quality control rules:

(~~1~~A) OAC 252:100-13 Open Burning

(~~2~~B) OAC 252:100-25 Visible Emissions and Particulates

(~~3~~C) OAC 252:100-29 Control of Fugitive Dust

(~~4~~D) OAC 252:100-41 Control of Emission of Hazardous and Toxic Air Contaminants.

(2) **Permit exempt facilities.** Permit exempt facilities are exempted from the permitting requirements of OAC 252:100-7, the requirement to submit an annual emission inventory as required by OAC 252:100-5-2.1, and the requirement to pay annual operating fees as required by OAC 252:100-5-2.2(b). Permit exempt facilities remain subject to all other applicable State and Federal air quality control rules and standards.

(c) **Permit application.**

(1) All applications shall be signed by the applicant.

(2) The signature on an application for a permit shall constitute an implied agreement that the applicant shall be responsible for assuring construction or operation, as applicable, in accordance with the application and OAC 252:100.

(3) 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 the draft permit.

(d) **Applicability determination.** Upon written request along with the required fee and any relevant information needed, the DEQ will make a determination of whether a permit is required.

(e) **Change in permit status.** The owner or operator of a permitted facility may at any time notify the DEQ that the facility:

(1) Is de minimis, requesting termination of the permit, or

(2) Qualifies for either a permit by rule or a general permit, submitting the appropriate application for such permit~~.~~, or

(3) Is permit exempt, requesting termination of the permit.

(f) **Transfer of permit.** The transfer of ownership of a stationary source or a facility shall subject the new owner or operator to existing permit conditions and/or compliance schedules. A new permit is not required. The transferor shall notify the AQD in writing no later than 10 days following the change in ownership.

(g) **Emission calculation methods.**

(1) Except as allowed by OAC 252:100-7-2(g)(2) of this subsection, the methods in OAC 252:100-5-2.1(d) shall be used when calculating regulated air pollutant emission rates for purposes of determining if an Air Quality Division permit is required or what type of permit is required.

(2) In lieu of calculating regulated air pollutant emission rates to determine if emissions from a facility meet the emission limits in the definition of permit exempt facility, the owner or operator of an oil and gas exploration and production facility or a natural gas compressor facility may assume the facility is permit exempt without calculation if the equipment and throughput at the facility meet the following criteria.

(A) **Engines.** The facility's total maximum manufacturer's designed rated horsepower for all reciprocating internal combustion engines in compressor service equals 240 or less.

(B) **Other equipment.**

(i) For an oil and gas exploration and production facility operating a liquid hydrocarbon storage vessel with the potential for flash emissions and/or a glycol dehydrator, the facility-wide actual annual average natural gas throughput is less than 0.650 MMSCFD (650,000 standard cubic feet per day) and the actual annual average hydrocarbon liquid throughput is less than 250 barrels per day.

(ii) For a compressor facility that is a natural gas transmission and storage facility operating a glycol dehydrator that is the only HAP emission source at the facility other than reciprocating internal combustion engines, the facility-wide actual annual average natural gas throughput is less than 1.0 MMSCFD (1 million standard cubic feet per day).

PART 2. PERMIT APPLICATION FEES

252:100-7-3. Permit application fees

(a) **Minor facility permit application fees.** A permit application or a request for an applicability determination received after the effective date of ~~this subsection~~ OAC 252:100-7-3(a) will be assessed a one-time fee that must accompany the application or request. Applications received without appropriate fees are incomplete. Fees must be paid by check or money order made payable to the Oklahoma Air Quality Division in accordance with the following fee schedule:

(1) **Applicability determination.** $250, to be credited against the construction or operating permit application fee, if a permit is required. If no permit is required, the fee will be retained to cover the cost of making the determination.

(2) **Construction permit application fees.**

(A) Permit by rule registration - $250

(B) General permit authorization or NOI (Notice of Intent) - $400

(C) Individual permit (initial construction or for added emissions) -

(i) Emissions of each regulated air pollutant less than 40 tons per year - $1000

(ii) Emissions of any regulated air pollutant 40 to 99.99 tons per year - $1500

(D) Amendments of individual permits which do not increase emissions - $500

(E) Extension of time and transfer of ownership - no fee

(3) **Operating permit application fees.**

(A) Permit by rule registration - $100

(B) General permit authorization - $150

(C) Individual permit - $500

(D) Modification of individual permit - $200

(E) Relocation - $100

PART 3. CONSTRUCTION PERMITS

252:100-7-15. Construction permit

(a) **Construction permit required.** No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility or a permit exempt facility as defined in OAC 252:100-7-1.1 without first obtaining a DEQ-issued air quality construction permit. A construction permit is also required for any modification that would cause an existing facility to no longer qualify for de minimis status, permit exempt facility status, or its current permit category. In addition, a construction permit is required to add a piece of equipment or a process that is subject to NSPS or NESHAP or to add or physically modify a piece of equipment or a process that results in an increase in actual emissions of any one regulated air pollutant by more than 5 ~~tons per year~~ tpy at an existing facility covered by an individual permit.

(b) **Permit categories.** Three types of construction permits are available: permit by rule, general permit, and individual permit. A permit by rule may be adopted or a general permit may be issued for an industry if there are a sufficient number of facilities that have the same or substantially similar operations, emissions, and activities that are subject to the same standards, limitations, and operating and monitoring requirements.

(1) **Permit by rule.** An owner or operator of a minor facility may apply for registration under a permit by rule if the following criteria are met:

(A) The facility has actual emissions less than 40 tons per year of each regulated air pollutant, except HAPs.

(B) The facility does not emit or have the potential to emit 10 tons per year or more of any single HAP or 25 tons per year or more of any combination of HAPs.

(C) The DEQ has established a permit by rule for the industry in Part 9 of this Subchapter.

(D) The facility certifies that it will comply with the applicable permit by rule.

(E) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(2) **General permit.** Minor facilities may qualify for authorization under a general permit if the following criteria are met:

(A) The facility has actual emissions less than 100 tons per year of each regulated air pollutant, except for HAPs.

(B) The facility does not emit or have the potential to emit 10 tons per year or more of any single HAP or 25 tons per year or more of any combination of HAPs.

(C) The DEQ has issued a general permit for the industry.

(3) **Individual permit.** Minor facilities requiring permits under this Subchapter which do not qualify for permit by rule or a general permit shall obtain individual permits. An owner or operator may apply for an individual permit even if the facility qualifies for a permit by rule or a general permit.

(c) **Content of construction permit application.**

(1) **Individual permit.** An applicant for an individual construction permit shall provide data and information required by this Chapter on an application form available from the DEQ. Such data and information should include but not be limited to site information, process description, emission data, and when required, BACT determination, modeling and sampling point data.

(2) **General permit.** An applicant for ~~coverage~~ authorization under a general permit shall provide data and information required by that permit on a form available from the DEQ. For general permits that provide for application through the filing of a notice of intent (NOI), ~~coverage~~ authorization under the general permit is effective upon receipt of the NOI.

(d) **Permit contents.** The construction permit:

(1) Shall require the permittee to comply with all applicable air pollution rules.

(2) Shall prohibit the exceedance of ambient air quality standards contained in OAC 252:100-3.

(3) May establish permit conditions and limitations as necessary to assure compliance with all rules.

(e) **Failure to comply with a construction permit.** A violation by the owner or operator of the limitations or conditions contained in the construction permit shall subject the owner or operator to any or all enforcement penalties, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules. No operating permit will be issued until the violation has been resolved to the satisfaction of the DEQ.

(f) **Cancellation of authority to construct or modify.** A duly issued permit to construct or modify will terminate and become null and void (unless extended as provided below) if the construction is not commenced within 18 months of the permit issuance date, or if work is suspended for more than 18 months after it has commenced.

(g) **Extension of authorization to construct or modify.**

(1) Prior to the permit expiration date, a permittee may apply for extension of the permit by written request of the DEQ stating the reasons for the delay/suspension and providing justification for the extension. The DEQ may grant:

(A) one extension of 18 months or less or

(B) one extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site.

(2) If construction has not commenced within three (3) years of the effective date of the original permit, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

PART 4. OPERATING PERMITS

252:100-7-18. Operating permit

(a) **Permit required.**

(1) No person shall cause or authorize the operation of a new or modified minor facility for more than a 60-day period without applying for a DEQ permit to operate.

(2) No owner or operator shall cause or authorize the operation of a minor facility if the DEQ denies or revokes a permit to operate.

(b) **Permit Categories.** Three types of operating permits are available. See OAC 252:100-7-15(b) for a complete description of the permit categories.

(c) **Permit application requirements.**

(1) **Application content.** Application ~~will~~ shall be made on a form provided by the DEQ. An application shall contain:

(A) The proposed operation start-up date, or phased dates when applicable.

(B) Revisions to the installation/construction, if any, that differed from the construction design and plan given in the permit application material, data and specifications.

(2) **Emission tests.** Before a permit to operate a new or modified minor facility is granted, the applicant, if required by the DEQ, shall conduct emission tests in accordance with methods approved by the DEQ with the tests being made at the expense of the applicant. The DEQ shall be given advance notice of the tests, may monitor performance tests conducted by the applicant, and may also conduct emissions tests. The results of any required test must be provided to the DEQ along with supporting information as required.

(d) **Operating permit conditions.**

(1) Emission limitations established and made a part of the construction permit are incorporated into and become enforceable limitations of the subsequently issued operating permit.

(2) Permit limitations in adjustment of, or in addition to, the facility's construction permit limitations may be

made a condition of the facility's operating permit issuance.

~~(e) **Applicability.**~~

~~(1) Applications for modifications to existing Part 70 sources may be submitted and processed, and operating permits may be issued under this section until such time as an application for a Part 70 operating permit shall be required under 252:100-8-4(b)(4). Applications for a Part 70 operating permit or a modification to a Part 70 operating permit submitted after that time shall be processed in strict accordance with Part 70 requirements in Subchapter 8. In the event the final permit, as issued, contains limitations such that the facility no longer meets the definition for "Part 70 source," the permit shall, upon expiration of all time limitations for judicial review, be deemed to be a minor facility operating permit.~~

~~(2) Applications for construction and operating permits for New Major Stationary Sources classified as Tier III under 252:2-15-42 shall be subject to the Part 70 operating permit requirements contained in Subchapter 8 notwithstanding 252:100-7-18(e)(1) above.~~

[OAR Docket #04-822; filed 5-3-04]

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

[OAR Docket #04-823]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Open Burning
252:100-13-2 [AMENDED]
252:100-13-7 [AMENDED]
252:100-13-9 [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201 and 2-5-101, *et seq.*
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April 28, 2004
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The Department proposes to amend Subchapter 13, Open Burning. The Oklahoma legislature adopted requirements for activities to be considered fire training. The statute, Oklahoma Clean Air Act, 27A O.S., §2-5-106.1, became effective November 1, 2003. For conformity, the Department proposed incorporating the new statute by reference into the rule. Definitions of "fire training", "human-made structure" and "yard brush" have been added to OAC 252:100-13-2. In order to address concerns over open burning of yard wastes, the Department proposes the addition of a provision to allow open burning of yard brush to OAC 252:100-13-7. Revisions to addresses general conditions and requirements for allowed open burning are proposed, including a correction made in Section 9 that will add an exemption for hydrocarbon flares from the prohibition against burning between sunset and sunrise.
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 11, 2004:

SUBCHAPTER 13. OPEN BURNING

252:100-13-2. Definitions

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

"Combustible materials" means any substance which will readily burn and shall include those substances which, although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

"Domestic refuse" means combustible materials or refuse that normally result from the function of life at a residence, such as kitchen garbage, untreated lumber, cardboard boxes, packaging, clothing, grass, leaves, and branch trimmings. It does not include such things as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances.

"Fire training" means a fire purposely set as part of an organized program of drills for the training of firefighting personnel or for testing firefighting materials or equipment, which is part of a recognized training program.

"Human-made structure" means any structure constructed with the intent of providing shelter to persons or property. It does not include structures constructed specifically for live-burn fire training purposes.

"Land clearing operation" means the uprooting, cutting, or clearing of vegetation in preparation for the construction of

buildings, the development of residential, commercial, agricultural, or industrial properties, and for the construction and maintenance of right-of-ways. It does not include the clearing of vegetation such as trimmings, fallen limbs, branches, or leaves, or other wastes from routine property maintenance activities.

"Open burning" means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

"Open-pit incinerator" means a device consisting of a pit (into which the material to be combusted is placed) and nozzles, pipes, and other appurtenances designed and arranged in a manner to deliver additional air and/or auxiliary fuel to, or near, the zone of combustion so that theoretically complete combustion is accomplished or approached.

"Products of combustion" means all particulate and gaseous air contaminants emitted as a result of the burning of refuse and combustible materials.

"Refuse" means garbage, rubbish, domestic refuse and all other wastes generated by a trade, business, industry, building operation, or household.

"Yard brush" means cut or broken branches, leaves, limbs, shrubbery, or tree trimmings. It does not include refuse, grass clippings, in-ground tree stumps, or any non-vegetative material.

252:100-13-7. Allowed open burning

When not prohibited by law or ordinance, the following types of burning are allowed, provided the conditions and requirements in 252:100-13-9 have been met:

(~~a~~1) **Fire training.** ~~Open burning is allowed for fires purposely set for the instruction and training of public and industrial fire-fighting personnel, provided that authorization has been requested from the local fire chief at least ten working days prior to any burning or that written authorization has been received prior to such burning. The DEQ may require written verification of the authorization from the local fire chief or fire training officer.~~ Open burning of human-made structures for the purpose of fire training is allowed as provided for in Oklahoma Clean Air Act, 27A O.S., § 2-5-106.1. Industrial and commercial facilities and fire training schools conducting on-site live burn fire training are not subject to this provision.

(~~b~~2) **Elimination of hazards.** Provided prior authorization is obtained from the local fire chief, open burning is allowed for the elimination of:

(~~1~~A) A fire hazard that cannot be abated by any other means.

(~~2~~B) A dangerous or hazardous material when there is no other practical or lawful method of abatement or disposal if authorization is also received from the DEQ prior to such burning.

(~~c~~3) **Recreational and ceremonial fires.** Open burning is allowed for camp fires and other fires used solely for recreational purposes, ceremonial occasions, or non-commercial preparation of food.

(~~d~~4) **Land management and land clearing operations.** Open burning is allowed for the following land management and land clearing operations.

(~~1~~A) Fires purposely set to forest, crop or range lands for a specific reason in the management of forests, crops or game, in accordance with practices recommended by the Oklahoma Department of Wildlife Conservation, the Oklahoma State Department of Agriculture, and the United States Forest Service.

(~~2~~B) Fires purposely set for land clearing operations if conducted at least 500 feet upwind of any occupied residence other than those located on the property on which the burning is conducted, except that such burning must be conducted in open-pit incinerators in counties or areas that are or have been designated nonattainment.

(~~e~~5) **Burning of domestic refuse.** Where no collection and disposal service is reasonably available, domestic refuse may be burned on the property where the waste is generated.

(~~f~~6) **Hydrocarbon burning.** Open burning of hydrocarbons is allowed for:

(~~1~~A) The disposal of spilled hydrocarbons or the waste products of oil exploration, development, refining or processing operations which cannot be feasibly recovered or otherwise disposed of in a legal manner. Notice must be given to the DEQ prior to such burning.

(~~2~~B) The disposal of waste hydrocarbons through a flare. The owner or operator shall be required to use a smokeless flare if a condition of air pollution is determined to exist by the DEQ.

(~~g~~7) **Open-pit incinerator.** Except for hazardous material, any combustible material or refuse that is allowed to be burned under this Subchapter may be burned in an open-pit incinerator that is properly designed and operated for the control of smoke and particulate matter. The owner or operator of the open-pit incinerator shall not accept any material owned by other persons and shall not transport any material to the property where the open-pit incinerator is located in order to burn the material.

(8) **Yard brush.** Yard brush may be burned on the property where the waste is generated.

252:100-13-9. General conditions and requirements for allowed open burning

The open burning of refuse and other combustible material may be conducted ~~as allowed in this Subchapter~~ only if the following conditions and requirements are met:

(1) No public nuisance is or will be created.

(2) The burning is controlled so that a ~~traffic~~ visibility hazard is not created on any roadway, rail track or air field as a result of the air contaminants being emitted.

(3) The burning is conducted so that the contaminants do not adversely affect the ambient air quality ~~–~~of a city or town.

(4) The initial burning shall begin only between three hours after sunrise and three hours before sunset and additional fuel shall not be intentionally added to the fire at times outside these limits. This requirement does not apply to the open burning allowed under ~~252:100-13-7(a), (b), (c), and (d)(1)~~ 252:100-13-7(2), (3), (4)(A) and (6)(B).

[OAR Docket #04-823; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #04-824]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Incorporation by Reference
252:205-3-1 [AMENDED]
252:205-3-2 [AMENDED]
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Incorporated standards:
Title 40, Parts 124, 260-266, Parts 268, 270, 273 and 279 of the Code of Federal Regulations as amended through July 1, 2003
Incorporating rules:
252:205-3-1 and 252:205-3-2
Availability:
From the contact person listed below
ANALYSIS:
The purpose of the proposed amendment to 252:205-3-1 is to adopt by reference the federal hazardous waste regulations found in Title 40 of the Code of Federal Regulations (40 CFR) as amended through July 1, 2003. Specifically: 1) 67 FR 48393, published July 24, 2002, regarding zinc fertilizers made from recycled hazardous secondary materials; 2) 67 FR 62618, published October 7, 2002, regarding a national treatment variance to designated new treatment subcategories for radioactively contaminated batteries; 3) 67 FR 77687, published December 19, 2002, regarding the standards for hazardous air pollutants for hazardous waste combustors [corrections to NESHAP].

The purpose of the proposed amendments to 252:205-3-2 are to partially implement the federal waste exclusion rule, and to correct specific errors in the 2002 and preceding 40 CFRs. The sections of the 40 CFR affected include: 261.4(b)(18) which pertains to Utah only, thus should be excluded; 268.7(a)(9)(iii) to exclude D009 from the list of alternative treatment standards for lab packs.
CONTACT PERSON:
Gail Hamill (405) 702-5100, 707 North Robinson, Fifth Floor, Oklahoma City, Oklahoma 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 11, 2004:

SUBCHAPTER 3. INCORPORATION BY REFERENCE

252:205-3-1. Reference to 40 CFR

When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified) the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through July 1,~~2002~~ 2003.

252:205-3-2. Incorporation by reference

(a) **Part 124.** Procedures For Decision Making, those sections required by 40 CFR 271.14, with the following additions:

(1) § 124.19 (a) through (c) and (e);

(2) §§ 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: For the purposes of this section only, "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR ~~part~~ Part 271.

(b) **Part 260.** Hazardous Waste Management System: General, except 260.21. In the 260.10 definitions of "new tank system" and "existing tank system", the reference to "July 14, 1986" for commencement of tank installation applies only to tank regulations promulgated pursuant to the federal Hazardous and Solid Waste Amendment ("HSWA") requirements. The following categories outline HSWA requirements: (a) Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators [3001(d)]; (b) Leak detection requirements for all new underground tank systems [3004(o)(4)]; and (c) permitting standards for underground tanks that cannot be entered for inspection [3004(w)]. For tank regulations promulgated pursuant to statutory authority other than HSWA, the date relative to the commencement of installation is November 2, 1987.

(c) **Part 261.** Identification and Listing of Hazardous Waste except 261.4(b)(18) which pertains to Utah only, thus should be excluded. In 261.4(e)(3)(iii) delete "in the Region where the sample is collected". In 261.5(f)(3)(iv), and (v), and in

261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".

(d) **Part 262.** Standards Applicable to Generators of Hazardous Waste except Subpart E and Subpart H. In 262.42(a)(2) and 262.42(b) delete "for the Region in which the generator is located".

(e) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.

(f) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The following sections and subsections are not adopted by reference: 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), and 264.1080(g). In 264.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988. In 264.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987. In 264.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987. In 264.570(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

(g) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g). In 265.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988. In 265.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987. In 265.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987. In 265.440(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

(h) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. Due to an early incorporation by reference, for purposes of Part 266 only, HSWA and non-HSWA dates are the same. In 266.325, the reference to 10 CFR 1.5 is changed to 10 CFR 71.5.

(i) **Part 268.** Land Disposal Restrictions, except 268.5, 268.6, 268.13, 268.42(b) and 268.44(a) through (g). In 268.7 (a)(9)(iii) exclude D009 from the list of alternative treatment standards for lab packs.

(j) **Part 270.** Permit Programs, except 270.14(b)(18).

(k) **Part 273.** Universal Waste Rule.

(l) **Part 279.** Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."

(m) **Excepted CFR Regulations.** Authority for carrying out excepted CFR regulations remains with EPA.

[OAR Docket #04-824; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 300. LABORATORY ACCREDITATION PROCESS

[OAR Docket #04-825]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Laboratory Accreditation Process
252:300-5-5 [AMENDED]
Subchapter 15. Proficiency Testing
252:300-15-5 [AMENDED]
Subchapter 17. Quality Assurance/Quality Control
252:300-17-1 [AMENDED]
252:300-17-4 [AMENDED]
Subchapter 19. Classifications
252:300-19-1 [AMENDED]
252:300-19-2 [AMENDED]
252:300-19-3 [AMENDED]
Subchapter 21. Categories
252:300-21-3 [AMENDED]
252:300-21-4 [NEW]
Appendix B. Analytes for General Water Quality Laboratory Categories [REVOKED]
Appendix B. Analytes for General Water Quality Laboratory Categories [NEW]
Appendix D. Analytes for Petrolelum Hydrocarbon Laboratory Category [NEW]
AUTHORITY:
Environmental Quality Board 27A O.S. §§ 2-2-101, 2-2-201 and Article IV, Laboratory Services and Certification, §§ 2-4-101 *et seq.*
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated Standards:
40 CFR 141.23 and 141.24 (July 2002)
Incorporating Rules:
252:300-19-3

Availability:

Incorporated standards are available online at EPA's website, www.epa.gov, or from the contact person, David Caldwell.

ANALYSIS:

The Quality Assurance portion of the rules was revised following EPA and National Environmental Laboratory Accreditation Conference recommendations. At the request of the Oklahoma Corporation Commission and the DEQ Water Quality Division, an additional Petroleum Hydrocarbon category was added. An update to accreditation fees was added at a request from a Laboratory Services Advisory Council meeting on September 18, 2003. The cost of the laboratory accreditation program is funded through user fees charged to participants. These rules change the user fees so that a laboratory requesting interim accreditation change to an existing accreditation pays a reduced fee. Otherwise, there is no increase in the cost of participation in the laboratory accreditation program. The application fee for Interim Accreditation is reduced from $850.00 to $500.00. Participants in the laboratory accreditation program will benefit from the fee reduction when interim accreditation is requested. This change reduces the financial impact from an initial laboratory accreditation fee to a lesser amount for interim accreditation. In addition, rules have been edited for inconsistent language.

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 11, 2004:

SUBCHAPTER 5. LABORATORY ACCREDITATION PROCESS

252:300-5-5. Fees

The following fees apply:

(1) **Initial or interim.** Application fees for initial or interim accreditation include the applicable category fee assessed in subsection (4) of this section and the applicable certification fees as follows:

(A) ~~Individual Drinking Water~~ Initial Accreditation - $850.00

(B) ~~Individual General Water Quality~~ Interim Accreditation - ~~$850.00~~ $500.00

(2) **Renewal**: Renewal fees include the applicable category fee assessed in subsection (4) of this section and the renewal application fee.

(A) Renewal Application Fee - $25.00

(B) Renewal Late Fee - $250.00

(3) Accreditation amendment fee - $50.00

(4) Category fees:

(A) One Category - $350.00

(B) Two Categories - $700.00

(C) Three Categories - $1050.00

(D) Four or more Categories - $1400.00

(5) Public water supply system fee exemption - There is no laboratory accreditation fee for public water supply systems that pay the minimum annual public water supply regulatory service rate fee of $0.04 per service connection per month.

SUBCHAPTER 15. PROFICIENCY TESTING

252:300-15-5. General requirements

(a) Laboratories seeking to renew accreditation must successfully analyze vendor supplied, regularly scheduled proficiency testing samples approximately six (6) months apart in each calendar year. Failure to meet the semiannual schedule shall be regarded as a failed study on the last day of the seventh (7th) month.

(b) Laboratories shall successfully analyze at least two (2) PT studies within the most recent three rounds attempted (2 of 3) prior to renewal. Laboratories may analyze additional or supplemental studies; however, such studies must be reported to the DEQ.

(c) General water quality proficiency testing samples must be Water Pollution (WP) type testing samples.

(d) Drinking water proficiency testing samples must be Water Supply (WS) type testing samples.

(e) Petroleum hydrocarbon proficiency testing samples must include benzene, toluene, ethylbenzene and xylene (BTEX) and Total Petroleum Hydrocarbons (TPH). Both soil and water matrices must be analyzed if both soil and water samples are to be accepted by the laboratory.

SUBCHAPTER 17. QUALITY ASSURANCE/QUALITY CONTROL

252:300-17-1. Quality Assurance/Quality Control (QA/QC) Plan

(a) Every accredited laboratory shall maintain a written QA plan and implement it into a QA/QC program to ensure that all routinely generated analytical data are scientifically valid and defensible and are of known and acceptable precision and accuracy. ~~The written plan shall contain at a minimum:~~

~~(1) a title page identifying the laboratory, date of preparation, date of review and the applicant's signature;~~

~~(2) a table of contents;~~

~~(3) a detailed statement of the laboratory organization, line of authority and identification of principal quality assurance personnel;~~

~~(4) a statement of quality assurance objectives which include but are not limited to data quality objectives containing precision and accuracy goals, and a description of criteria used by the laboratory to judge the acceptability of each test;~~

~~(5) specifications for:~~

~~(A) the use of proper sample containers;~~

~~(B) the proper preparation of sample containers;~~

~~(C) the proper preservation of samples; and~~

~~(D) compliance sample maximum allowable holding times;~~

~~(6) a procedure to maintain integrity of all samples from receipt by the laboratory through analysis to disposal, including chain of custody;~~

~~(7) a procedure for instrument or equipment calibration and frequency of use;~~

~~(8) a listing of all analytical procedures along with approved methods;~~

~~(9) a procedure for data reduction (calculation and conversion of raw data to specific units of measure, i.e. mg/L, etc.), validation (includes assuring accuracy of data review and transcription) and reporting (includes procedures and format for reporting data);~~

~~(10) procedures for quality control checks and frequency of use (preparation of calibration curves, instrument calibration, replicate analyses, use of EPA provided quality control samples or calibration standards, and use of quality control charts);~~

~~(11) preventive maintenance procedures and schedules;~~

~~(12) specific routine procedures used to determine data precision and accuracy for each analyte measured;~~

~~(13) corrective action procedures taken when results from PE samples and internal quality control checks are unacceptable;~~

~~(14) performance and systems audits; and~~

~~(15) quality assurance reports to management and those who use the generated data.~~

(b) The QA plan shall include or make reference to the supporting procedures including technical procedures, and shall outline the structure of the documentation used in the quality system.

(c) The QA plan and related quality documentation shall state the laboratory's policies and operational procedures established in order to meet the requirements of this rule.

(d) The QA plan shall list the following on the title page:

(1) a document title;

(2) the laboratory's full name and address;

(3) the names, addresses (if different from paragraph 2), and telephone numbers of all individuals responsible for the laboratory;

(4) the name of the quality manager (however titled);

(5) the identification of all major organizational units which are to be covered by this QA plan; and

(6) the effective date of the version.

(e) The QA plan and related quality documentation shall also contain:

(1) a quality policy statement, including objectives and commitments, by top management;

(2) the organization and management structure of the laboratory, its place in any parent organization and relevant organizational charts;

(3) the relationship between management, technical operations, support services and the quality system;

(4) procedures to ensure that all records required are retained, as well as

(5) procedures for control and maintenance of documentation through a document control system which ensures that all standard operating procedures (SOPs), manuals, or documents clearly indicate the time period during which the procedure or document was in force;

(6) job descriptions of key staff and reference to the job descriptions of other staff;

(7) identification of the laboratory's approved signatories; at a minimum, the title page of the QA plan must have the signed and dated concurrence, (with appropriate titles) of all responsible parties including the quality manager(s), technical director(s), and the agent who is in charge of all laboratory activities such as the laboratory director or laboratory manager;

(8) the laboratory's procedures for achieving traceability of measurements;

(9) a list of all test methods under which the laboratory performs its accredited testing;

(10) mechanisms for ensuring that the laboratory reviews all new work to ensure that it has the appropriate facilities and resources before commencing such work;

(11) reference to the calibration and/or verification test procedures used;

(12) procedures for handling submitted samples;

(13) reference to the major equipment and reference measurement standards used as well as the facilities and services used by the laboratory in conducting tests;

(14) reference to procedures for calibration, verification and maintenance of equipment;

(15) reference to verification practices which may include interlaboratory comparisons, proficiency testing programs, use of reference materials and internal quality control schemes;

(16) procedures to be followed for feedback and corrective action whenever testing discrepancies are detected or departures from documented policies and procedures occur;

(17) the laboratory management arrangements for exceptional departures from documented policies and procedures or from standard specifications;

(18) procedures for dealing with complaints;

(19) procedures for protecting confidentiality (including national security concerns) and proprietary rights;

(20) procedures for audits and data review;

(21) processes/procedures for establishing that personnel are adequately experienced in the duties they are expected to carry out and are receiving any needed training;

(22) reference to procedures for reporting analytical results; and

(23) a Table of Contents, and applicable lists of references and glossaries, and appendices.

252:300-17-4. General water quality accredited laboratories

QC requirements specified by approved methodologies shall be practiced in the general water quality laboratory. The laboratory shall establish control limits for all types of QC samples. If approved methodologies do not specify minimum laboratory QA/QC requirements, the following frequencies shall apply:

(1) **Inorganic/classic chemistry.** For inorganic/classic chemistry:

(A) A minimum of three concentrations of standards for daily calibration plus one continuing calibration check standard after each ten samples tested. The lab should repeat all samples tested after the last

acceptable continuing calibration check if the continuing calibration check standard is outside ± 10%.

(B) One blank per twenty samples tested (or batch).

(C) If applicable, one spike per twenty samples tested (or at least once per month, whichever is the greater frequency,).

(D) One duplicate or spiked duplicate per twenty samples tested or at least once per month, whichever is the greater frequency.

(2) **Organics.** For organics (provided that where possible, surrogates shall be used for all samples):

(A) A minimum of three concentrations of standards for_daily calibration plus one continuing calibration check standard after each ten samples tested inside established control limits; if any are outside the limits, repeat all samples tested after the last acceptable continuing calibration check.

(B) One reagent blank (carried through preparation) per twenty samples tested (or per batch).

(C) One matrix spike per twenty samples tested (or per batch).

(D) One matrix spike duplicate per twenty samples tested (or per batch).

(3) **QA/QC documentation.** Documentation shall be kept to insure quality control has been maintained and that proper methodologies have been used for the preparation and analysis of samples. All documentation shall be maintained and be readily available for reference or inspection. The following QC documentation shall be maintained in each work area:

(A) **Bench records.** Data associated with analysis, date, time, analyst, method, amounts, calculations, sample matrix, sample identification.

(B) **Calibration data.** Calibration curve or coefficient of the linear equation which describes the calibration curve; concentration/response data (or relative response data) for standards; percent recovery of an initial calibration check standard and the date it was analytically determined; percent recovery of the continuing calibration check standard; and laboratory sample identification of the samples run with this curve.

(~~4~~C) **Extraction/digestion records.** Date, analyst, type of extraction or digestion for each sample, and laboratory sample identification.

(~~5~~D) **Surrogate records.** Amount of surrogate spiked, percent recovery of each surrogate, date, analyst, and laboratory sample identification.

(~~6~~E) **Maintenance logs.** By instrument, dates and description of repairs, preventive maintenance, malfunctions, and other actions or events affecting instrument performance.

(~~7~~F) **QC charts.** ~~Records of all spikes and duplicates, maintained (by analyte) in a spike and duplicate control chart for the evaluation of the cumulative trends of the statistics from a series of samples, providing actual comparison of data to historical data by setting limits.~~ Quality control procedures for monitoring the validity of the environmental testing. The resulting data shall be recorded in such a way that trends are detectable, and statistical techniques shall be applied to the reviewing of the results. All laboratories shall have detailed written protocols in place for positive and negative controls, variability, repeatability, and accuracy of the methods.

(~~8~~G) **Sample login.** Procedures plan for sample login, unique sample identification, date, time, source of sample (including name, location and sample matrix), preservative used, analysis required, name of collectors and any pertinent field data.

(~~9~~H) **Spike/duplicate/spike-duplicate data.** Date, analyst, laboratory sample number, amount spiked, percent recovery, percent of difference, and makeup and concentration in the spiking solution.

(~~10~~I) **Temperature logs.** By oven, incubator, freezer, and or refrigerator, daily (during periods of use) temperature readings and any temperature excursions with corrective action, recorded in a bound logbook.

(~~11~~J) **Weight logs.** By balance, checked with the appropriate range of class S weights weekly (during periods of use) before use and results recorded in a bound log book. Each balance serviced and calibrated at least once per year by an accredited technician.

SUBCHAPTER 19. CLASSIFICATIONS

252:300-19-1. Classifications

(a) **Drinking water.** A drinking water quality accreditation is available to laboratories for the performance of compliance testing for public water supplies.

(b) **General water quality.** A general water quality accreditation is available to laboratories for the performance of analysis of water, wastewater, sludge ~~or~~ , groundwater or petroleum hydrocarbons.

252:300-19-2. Accreditation requirements

(a) **General.** Applicant laboratories shall demonstrate capability of meeting and maintaining compliance with the application requirements, the general operation requirements and accreditation requirements of this Chapter.

(b) **Specific.** To gain initial or interim accreditation, a laboratory shall successfully analyze two proficiency testing rounds. Proficiency testing rounds must have been performed within the last twelve (12) months and at least thirty (30) calendar days apart.

(1) **Drinking water laboratories.** Drinking water laboratories shall analyze water supply (WS) PT samples.

(2) **Water quality laboratories.** Water quality laboratories shall analyze water pollution (WP) PT samples. Petroleum hydrocarbon laboratories shall analyze BTEX and TPH in soil and or water matrices.

252:300-19-3. Methods

(a) Laboratories accredited by the DEQ shall use EPA approved methodologies, or methods specifically approved by the DEQ. As the EPA or the Board promulgates new rules, methodologies, or quality assurance/quality control requirements, accredited laboratories shall incorporate these procedures for all accredited analytes. Drinking water sampling and analytical requirements for inorganic chemicals are found at 40 CFR 141.23 and for organic chemicals at 40 CFR 141.24 (July, 2002), which are hereby incorporated by reference.

(b) Approved methodologies for general water quality laboratories are listed in the following:

(1) "Test Methods for Evaluating Solid Waste, November 1986, Laboratory Manual Physical/Chemical Methods," SW-846, 3rd edition, Volume 1A through 1C, as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996) and IIIA (April 1998), ~~Hereinafter~~ hereinafter referred to as SW-846.

(2) "Guidelines Establishing Test Procedures for the Analysis of Pollutants", 40 CFR Part 136 and Appendices A, B,and C thereof, Volume dated July 1, ~~2001~~ 2002.

(3) "Identification and Listing of Hazardous Waste" 40 CFR Part 261 and Appendices I through X thereof inclusive, Volume dated July 1, ~~2001~~ 2002.

(4) "Methods for Measuring the Acute Toxicity of ~~Effluent to~~ Effluents and Receiving Waters to Freshwater and Marine Organisms," ~~EPA-600/4-85/013, March 1985~~ 5th Edition, EPA 821-R-02-012 (October 2002).

(5) "Short-term Methods for Estimating the Chronic Toxicity of ~~Effluent~~ Effluents and Receiving Waters to Freshwater Organisms," ~~EPA/600/4-89/001, March 1989, 2nd edition~~ 4th Edition, EPA 821-R-02-013 (October 2002).

(6) "Short-term Methods for Estimating the Chronic Toxicity of ~~Effluent~~ Effluents and Receiving Waters to Marine and Estuarine Organisms," ~~EPA-600/4-87/028, May 1988~~ 3rd Edition, EPA 821-R-02-014 (October 2002).

(7) "Standards Methods for the Examination of Water and Wastewater", (American Public Health Association [APHA] 1992), (APHA 1995), and (APHA 1998).

(8) TNRCC Method 1005 Total Petroleum Hydrocarbons ($>nC_6$ to nC_{35}).

(9) "Aromatic and Halogenated Volatiles by Gas Chromatography" EPA 8021B.

(10) Oklahoma GRO 8120/8015 (Modified).

SUBCHAPTER 21. CATEGORIES

252:300-21-3. Basic environmental laboratory certification

A laboratory seeking accreditation under the basic environmental laboratory category may choose any or all of the analytes listed in Appendix C, and in addition, one other major category of certification in Appendix B or D. If the laboratory desires to be accredited in more than one other major category, the laboratory is no longer considered a basic environmental laboratory and shall pursue the general water quality classification specifying the desired categories.

252:300-21-4. Petroleum hydrocarbons certification

A laboratory seeking accreditation under the petroleum hydrocarbon certification category may choose any or all of the analytes listed in Appendix D.

APPENDIX B. ANALYTES FOR GENERAL WATER QUALITY LABORATORY CATEGORIES [REVOKED]

APPENDIX B. ANALYTES FOR GENERAL WATER QUALITY LABORATORY CATEGORIES [NEW]

Analytes considered for general water quality laboratory accreditation include the following:

Category I - Metals.

(A) Flame atomic absorption (AA)
(B) Furnace (AA)
(C) Inductively coupled plasma (ICP)
(D) Cold vapor
(E) Hydride
(F) Colorimetric

Category II - Nutrients.

(A) Ammonia-nitrogen
(B) Total Kjeldahl-nitrogen
(C) Nitrate-nitrogen
(D) Nitrate-nitrite-nitrogen
(E) Nitrite-nitrogen
(F) Organic-nitrogen
(G) Orthophosphate phosphorus
(H) Total phosphorus

Category III - Demands.

(A) Five day biochemical oxygen demand
(B) Five day carbonaceous biochemical oxygen demand
(C) Chemical oxygen demand
(D) Total organic carbon

Category IV - Extractable Organics.

(A) Methods by Gas Chromatography (GC) and Liquid Chromatography (LC) analysis include the following:
(i) EPA method 604 (phenols)
(ii) EPA method 605 (benzidines)
(iii) EPA method 606 (phthalic esters)
(iv) EPA method 607 (nitrosoamines)
(v) EPA method 609 (nitroaromatics and isophorone)
(vi) EPA method 610 - (polynuclear aromatic hydrocarbons)
(vii) GC or LC analysis)
(viii) EPA Method 611 (haloethers)
(ix) EPA method 612 (chlorinated hydrocarbons)

(B) Methods by Gas Chromatography-Mass Spectroscopy (GC-MS) analysis include the following:
(i) EPA method 613 (dioxin)

(ii) EPA method 625 (base-neutrals and acids)
(iii) EPA method 1625 (semi-volatiles, revision B).

Category V - General Chemistry I.

(A) Acidity
(B) Alkalinity
(C) Bromine
(D) Bromide
(E) Bromates
(F) Calcium
(G) Chloride
(H) Color
(I) Copper
(J) Fluoride
(K) Hardness
(L) Hydrogen ion (pH)
(M) Iron
(N) Magnesium
(O) Manganese
(P) Total residue
(Q) Total dissolved solids (Filterable residue)
(R) Total suspended solids (Non-filterable residue)
(S) Settleable residue
(T) Volatile residue
(U) Sulfate
(V) Nitrate
(W) Turbidity
(X) Zinc

Category VI - General Chemistry II.

(A) Residual chlorine
(B) Total cyanide
(C) Cyanide amenable to chlorination
(D) Oil & grease
(E) Dissolved oxygen
(F) Total phenols
(G) Elemental phosphorus
(H) Dissolved silica
(I) Specific conductance
(J) Sulfide
(K) Sulfite
(L) Surfactants
(M) Total dissolved gases
(N) Hexavalent chromium
(O) Corrosivity-calcium carbonate stability

Category VII - Microbiology.

Specific methods are listed in 40 C.F.R. Part 136, Table 1A.

(A) Fecal coliform bacteria
(B) Fecal coliform bacteria in the presence of chlorine
(C) Total coliform bacteria
(D) Total coliform bacteria in the presence of chlorine
(E) Fecal streptococci

Category VIII - Pesticides - Herbicides - PCB's.

(A) Methods by GC analysis.
(i) Methods 608, 608.1, 608.2, 509A - Organochlorine pesticides
(ii) methods 614, 614.1, 622, 622.1 - Organophosphorus pesticides
(iii) EPA method 617 - Organohalide pesticides and PCB's
(iv) EPA method 618 - Volatile pesticides
(v) EPA method 619 - Triazine
(vi) EPA method 627 - Dinitroaniline
(vii) EPA method 633 - Organonitrogen compounds
(viii) EPA method 645 - Amine and lethane
(ix) Methods 509B, 615 - Chlorinated herbicides
(B) Methods by GC-MS analysis.
(i) EPA method 625 - GC-MS
(ii) EPA method 1625 - GC-MS
(C) Methods by High Performance Liquid Chromatography (HPLC) analysis
(i) EPA method 629 - Cyanazine
(ii) EPA method 631 - Benomyl
(iii) EPA method 632, 632.1 - Carbamates
(iv) EPA method 612 - Biphenyl and o-Phenyl phenol
(v) EPA method 643 - Bentazon
(vi) EPA method 644 - Picloram

Category IX - Purgeable Organics.

(A) Methods by GC analysis
(i) EPA method 601 - Purgeable halocarbon
(ii) EPA method 602 - Purgeable aromatics
(iii) EPA method 603 - Acrolein and acrylonitrile
(B) Methods by GC-MS analysis
(i) EPA method 624 - Purgeable by GC-MS
(ii) EPA method 1624 Revision B-Volatile organics
(iii) EPA method 8260 Revision C - Volatile organics

Category X - Radiological.

(A) Total alpha, including alpha-counting error
(B) Total beta, including beta-counting error
(C) Total radium
(D) Radium-226

Category XI - Bioassay.

(A) Acute - Freshwater organisms
(B) Acute - Saltwater organisms
(C) Chronic - Freshwater organisms
(D) Chronic - Saltwater organisms

Category XII - Hazardous Waste Characterization.

(A) Waste ignitability
(B) Waste corrosivity
(C) Waste reactivity
(D) Toxicity Characteristic Leaching Procedure (TCLP)

APPENDIX D. ANALYTES FOR PETROLELUM HYDROCARBON LABORATORY CATEGORY [NEW]

Analytes considered for petroleum hydrocarbon laboratory accreditation include the following:

(A) Total Petroleum Hydrocarbons
  (1) TNRCC Method 1005 Total Petroleum Hydrocarbons (>nC_6 to nC_{35})
(B) BTEX
  (1) EPA 8021B Aromatic and Halogenated Volatiles by Gas Chromatography; or
  (2) Oklahoma GRO 8120/8015 (Modified)
(C) Flash Point
  (1) Appendix B, Category 7, Hazardous Waste Characteristics
(D) MTBE
  (1) Gas Chromatography/mass spectrometry (624/8260)

[OAR Docket #04-825; filed 5-3-04]

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

[OAR Docket #04-826]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:410-1-1 [AMENDED]
252:410-1-2 [AMENDED]
252:410-1-4 [AMENDED]
252:410-1-5 [AMENDED]
Subchapter 3. Radiation Machines - Common Requirements
252:410-3-7 [AMENDED]
252:410-3-33 [AMENDED]
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None
ANALYSIS:
The Department is proposing changes to Subchapters 1 and 3 as a single action. The proposed changes to Subchapter 1 include the addition of new definitions, changes to existing definitions, and deletion of a definition no longer being used. A new provision requires that DEQ be notified of incidents involving radiation machines, including notification of lost or stolen machines. The effective date of the rules is revised for clarification, and a new provision on administrative enforcement clarifies that enforcement of the rules is governed by the Department's Rules of Practice and Procedure. Changes to Subchapter 3 include a reference to new requirements for records to be maintained in the practice of industrial x-ray radiography and other changes to clarify existing record keeping requirements.
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 11, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

252:410-1-1. Purpose and applicability

(a) **Purpose.** The purpose of this Chapter is to ensure radiation management activities conducted within the jurisdiction of the DEQ are protective of health, safety, property and the environment.

(b) **Applicability.** Except as otherwise specifically provided, this Chapter applies to all persons who receive, possess, use, transfer, own, handle, dispose, store, house or acquire any source of radiation; provided, however, that nothing in this Chapter shall apply to any person to the extent such person's activity is subject to regulation under a specific license issued by the U.S. Nuclear Regulatory Commission or as a diagnostic x-ray facility by the Oklahoma State Department of Health.

(c) **State Agreement.** Any regulation by the State of Oklahoma of source material, byproduct material and special nuclear material in quantities not sufficient to form a critical mass is subject to agreement between the State and the U.S. Nuclear Regulatory Commission and to 10 CFR Part 150 of the Commission's Regulations.

(d) **Effective date.** This Chapter as amended shall become effective on June 1, 2000, except Subchapters 5 and 10 shall become effective on ~~the latter of June 1, 2000, or the date specified in the Agreement between the NRC and the State of Oklahoma providing for the discontinuance of the regulatory authority and assumption of the program by the DEQ~~ September 29, 2000.

(e) **Subchapters.** References to Subchapters are Subchapters in this Chapter.

(f) **Appendices.** References to appendices are appendices to this Chapter unless otherwise stated.

252:410-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise. In cases of conflict between the definitions of this section and those incorporated by reference from 10 CFR, 10 CFR definitions incorporated by reference into Subchapter 10 shall prevail for purposes of the ~~State Agreement~~ Radioactive Materials Program; definitions incorporated by reference into Subchapter 21 shall prevail for NESHAP purposes; and definitions incorporated by reference into Subchapter 20, shall apply to all persons subject to this Chapter.

"Accelerator-produced material" means any material made radioactive by a particle accelerator.

"Access panel" means any barrier or panel on a cabinet which is designed to be removed or opened for maintenance or service purposes, requires tools to open and allows access to the interior.

"Agreement State" means any State with which the U.S. Nuclear Regulatory Commission or the U.S. Atomic Energy Commission has entered into an effective agreement under subsection 274(b) of the Atomic Energy Act of 1954, as amended (73 Stat. 689; 42 USC §2021 *et seq.*).

"Analytical x-ray system" means a group of components utilizing x or gamma rays to determine the elemental composition or to examine the microstructure of materials.

"Anniversary date" means the issuance day and month of a permit or license.

"Application" means a written request for a new, amended or renewed authorization.

"Assembler" means any person engaged in the business of assembling, replacing, or installing one or more components into an x-ray system or subsystem. The term includes the owner of an x-ray system or his or her employee or agent who assembles components into an x-ray system that is subsequently used to provide professional or commercial services.

"Authorization" means any DEQ radiation management plan approval, certificate, individual certification, permit, license, or reciprocity recognition required by this Chapter.

"Beam-limiting device" means a device which provides a means to restrict the dimensions of the x-ray field.

"Byproduct material" means any material (except special nuclear material), yielded in or made radioactive by exposure to the ionizing radiation incident to the process of producing or utilizing special nuclear materials.

"Calibration" means the determination of:

(A) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or

(B) the strength of a source of radiation relative to a standard.

"Central axis of the beam" means a line passing through the virtual source and the center of the plane figure formed by the edge of the first beam limiting device.

"CFR" means the Code of Federal Regulations.

"Chapter" means, unless specified otherwise, OAC 252:410, Radiation Management.

"Collimator" means a device or mechanism by which the x-ray beam is restricted in size.

"Contact therapy" means an x-ray system used for therapy with the x-ray tube port placed in contact with or within 5 centimeters of the surface being treated.

"Control panel" means that part of the radiation machine control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

"Corresponding authorization" means a permit, license or certification issued to a person by an out-of-state entity that authorizes the same or similar radiation management activities as those authorized by DEQ for this state.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Dose monitoring system" means a system of devices for the detection, measurement, and display of quantities of radiation.

"Dose monitor unit" means a unit response from the dose monitoring system from which the absorbed dose can be calculated.

"Exposure rate" means the exposure per unit of time, such as Roentgen per minute and milliRoentgen per hour.

"Facility" or **"Site"** means the location at which one or more radiation producing units are located and/or installed. Facilities or sites with several such units located and/or installed in different buildings and/or vehicles, but at the same street address and under the same administrative control will be considered to be one facility.

"Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Field size" means the dimensions along the major axes of an area in a plane perpendicular to the central axis of the useful beam of incident radiation at a normal treatment distance and defined by the intersection of the major axes and the 50 percent isodose line. Material shall be placed in the beam such that dose maximum is produced at the normal treatment distance when field size is being determined.

"Filter" means material placed in the useful beam to absorb preferentially selected radiations.

"Focal spot" means the area projected on the anode of the x-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

"Gantry" means that part of the system supporting and allowing possible movement of the radiation head.

"Half-value layer", also known as "HVL", means the thickness of specified material which attenuate the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition, the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

"Healing arts" means those professional disciplines authorized by the laws of this state to use x-rays or radioactive material in the diagnosis or treatment of human or animal disease.

"Industrial radiographer" means an individual who performs or personally supervises industrial radiographic operations and who is responsible to their employer or contractor permittee or licensee for assuring compliance with the requirements of this Chapter and the conditions of the permit or license.

"Industrial radiography" means a non-destructive testing method that uses ionizing radiation such as gamma rays or x-rays to make radiographic images for the purpose of detecting flaws in objects.

"Industrial x-ray system" means an x-ray system used in manufacturing or for industrial quality control.

"Inspection" means an official examination or observation including but not limited to, records, tests, surveys, and monitoring to determine compliance with rules, orders, requirements, and conditions of the DEQ.

"Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur or, where applicable, means a device for precluding access to an area of high radiation by automatically reducing the exposure rate.

"Interruption of radiation" means stopping irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

"Irradiation" means the exposure of matter to ionizing radiation.

"Isocenter" means the intersection of the collimator axis of rotation and the gantry axis of rotation.

"kV" means kilovolts.

"kVp" means the maximum value of the potential difference across the x-ray tube during an exposure and shall be deemed to be equivalent to kilovolts peak.

"Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

"Leakage radiation" means radiation emanating from the therapeutic source assembly except for:

(A) the useful beam; and

(B) radiation produced when the exposure switch or timer is not activated.

"Leakage technique factors" means the technique factors which are used in measuring leakage radiation associated with the diagnostic or therapeutic assembly. They are defined as follows:

(A) for diagnostic tube housing assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential (kVp) and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs, i.e., 10 milliampere-seconds, or the minimum obtainable from the unit, whichever is larger.

(B) for diagnostic tube housing assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(C) for all other diagnostic or therapeutic tube housing assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

"Local components" mean part of a radiation machine and include areas that are struck by radiation such as housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors, and shielding, but do not include power supplies, transformers, amplifiers, readout devices, and control panels.

"mA" means milliampere.

"MeV" means million electron volts.

"Moving beam therapy" means radiation therapy with relative displacement of the useful beam and/or the patient during irradiation. It includes arc therapy, skip therapy, conformational therapy, and rotational therapy.

"Nominal treatment distance" means:

(A) for electron irradiation, the distance from the scattering foil or exit window of the electron beam to the surface along the central axis of the useful beam, or from the virtual source to the surface along the central axis of the useful beam as specified by the manufacturer.

(B) for x-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam. For nonisocentric equipment, this distance shall be that specified by the manufacturer.

"Normal operating procedures" mean step-by-step instructions necessary to accomplish the task. These procedures shall include sample insertion and manipulation, equipment alignment, routine maintenance by the permittee, and data recording procedures, which are related to radiation safety.

"NRC" means the U.S. Nuclear Regulatory Commission.

"Open-beam system" means an x-ray system in which an individual could accidentally place some part of his body in the primary beam path during normal operation.

"Part" means the numbered Part of the Subchapter in which the reference appears unless specified otherwise.

"Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV.

"Patient" means an individual subjected to a healing arts examination, diagnosis or treatment.

"Peak tube potential" (See kVp).

"Permanent x-ray radiographic installation" means an enclosed shielded room, cell or vault in which radiography is performed.

"Permittee" means any person who holds a permit issued by the DEQ in accordance with this Chapter.

"Personnel monitoring equipment" means devices such as film badges, pocket dosimeters, and thermoluminescent dosimeters designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual.

"Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

"Practical range of the electrons" corresponds to classical electron range where the only contribution to dose is from bremsstrahlung x-rays.

"Primary authorization" means the radiation management license, permit or certification issued by an out-of-state entity which DEQ has recognized under reciprocity.

"Primary beam" means ionizing radiation emitted from the target and passing through the window of the x-ray tube housing.

"Primary dose monitoring system" means a system which will monitor the useful beam during irradiation and which will terminate irradiation when a pre-selected number of dose monitor units have been acquired.

"Protective barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure. The types of protective barriers are as follows:

(A) **"Primary protective barrier"** means the material, excluding filters, placed in the useful beam, for protection purposes, to reduce the radiation exposure.

(B) **"Secondary protective barrier"** means a barrier sufficient to attenuate the stray radiation (the sum of leakage and scattered radiation) to the required degree.

"Qualified expert" means a person certified in an appropriate field by the American Board of Radiology in Physics, the American Board of Health Physics, the American Board of Medical Physics, the American Board of Nuclear Medicine Science, or persons otherwise deemed to have equivalent qualifications.

"Radiation detector" means a device which in the presence of radiation provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

"Radiation head" means the structure from which the useful beam emerges.

"Radiation machine" means any device capable of producing radiation except those which produce radiation only from radioactive material.

"Radiation safety officer" means an individual who has the responsibility to apply and enforce the overall radiation safety program at a facility or site.

"Radioactive material" means any solid, liquid, or gas which emits radiation spontaneously.

"Radioactive Materials Program" means the DEQ radiation management program for licensing of certain categories of radioactive materials based on the Oklahoma Environmental Quality Code including the Oklahoma Radiation Management Act; the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.* as amended; Title II of the Energy Reorganization Act of 1974, 42 U.S.C. 5801 *et seq.*; the State Agreement; this Chapter (OAC 252:410) including the rules incorporated from Title 10 of the Code of Federal Regulations; and orders or licenses issued thereunder.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiological physicist" means a person certified by the American Board of Radiology as either a radiological physicist or a radiation therapy physicist or by the American Board of Medical Physics certified in therapy physics, or persons with equivalent qualifications.

"Rating" means the operating limits as specified by the component manufacturer.

"Reciprocity recognition" means DEQ has recognized a person's radiation management authorization issued by an out-of-state entity as a primary authorization and, on the strength of that underlying authorization and the person's compliance record in that and other recognizing states, has authorized that person to perform certain corresponding radiation management activities in Oklahoma without a DEQ-issued permit, license or certification.

"Recognized person" means a person approved by DEQ for reciprocity recognition.

"Restricted area" (controlled area) means any area, access to which is controlled by the permittee, for the purpose of protecting individuals from exposure to radiation and radioactive material. A restricted area shall not include any areas used for residential quarters, although a room or rooms in a residential building may be set apart as a restricted area.

"Roentgen" means the special unit of exposure. One Roentgen (R) equals 2.58×10^{-4} coulombs/kilogram of air.

"Scattered radiation" means radiation that, during passage through matter, has been deviated in direction. The term includes direct scattered and primary scattered radiation which has been deviated in direction only by materials irradiated by the useful beam.

"Sealed source" means any radioactive material that is encapsulated to prevent leakage or escape of the radioactive material.

"Secondary dose monitoring system" means a system which will terminate irradiation in the event of failure of the primary system.

"Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

"Source material" means uranium or thorium, or any combination thereof, in any physical or chemical form, or ores which contain by weight one-twentieth of one percent or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

"Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the NRC determines to be special nuclear material, or any material artificially enriched by any of the foregoing, but does not include source material.

"Spot-check" means a procedure which is performed to assure that a previous calibration continues to be valid.

"State agreement" means the ~~NRC-DEQ~~ agreement between the NRC and the State of Oklahoma with effective date of September 29, 2000, transferring ~~NRC jurisdiction over licensed material in Oklahoma~~ to DEQ the NRC's regulatory authority in the State of Oklahoma for certain categories of radioactive material including: byproduct material, source material used to take advantage of its density and high-mass property where the use of the specifically licensed source material is subordinate to the primary specifically licensed use of byproduct material, and special nuclear material in quantities not sufficient to form a critical mass.

~~**"State agreement program"** means the DEQ radiation management program for licensed material based on the Oklahoma Environmental Quality Code including the Oklahoma Radiation Management Act; the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.* as amended; Title II of the Energy Reorganization Act of 1974, 42 U.S.C. 5801 *et seq.*; the NRC-DEQ State Agreement; this Chapter (OAC 252:410) including the rules incorporated from Title 10 of the Code of Federal Regulations; and orders or licenses issued thereunder.~~

"Stationary beam therapy" means radiation therapy without relative displacement of the useful beam and the patient during irradiation.

"Subchapter" means a Subchapter of this Chapter unless stated otherwise.

"Target" means that part of a radiation head which by design intercepts a beam of accelerated particles with subsequent emission of other radiation.

"Technique factors" means the conditions of operation. They are specified as follows:

(A) for capacitor energy storage equipment, peak tube potential (kVp) in kV and quantity of charge in milliampere second (mAs);

(B) for field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses;

(C) for CT equipment designed for pulsed operations, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(D) for CT equipment not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent; and

(E) for all other equipment, peak tube potential in kV and either tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

"Temporary job site" means a location where radioactive materials or radiation machines are used, other than the specific use location(s) listed on a permit or license.

"Termination of irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Test" means the process of verifying compliance with an applicable regulation.

"Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

"Tube housing assembly" means the tube housing with the tube installed. It includes any high-voltage and/or filament transformers and other appropriate elements contained within the tube housing.

"Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the exposure controls are in a mode to cause the system to produce radiation.

"Virtual source" means a point from which radiation appears to originate.

"Wedge filter" means an added filter effecting continuous progressive attenuation on all or part of the useful beam.

"X-ray field" means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

"X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube(s), high-voltage switches, electrical protective devices, and other appropriate elements.

"X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

"X-ray tube" means any electron tube which is designed to be used primarily for the production of x-rays.

"10 CFR" means Title 10 of the Code of Federal Regulations.

252:410-1-4. General regulatory requirements

(a) **Safety requirements.** All persons required to comply with this Chapter shall:

(1) **Operations.** Conduct all radiation management activities in such a manner as to minimize danger to health, safety, property and the environment. All radiation producing machines and other sources of radiation must be used according to the manufacturer's specifications and any other guidelines or standards that apply to the specific purpose of use.

(2) **Radiation protection standards.** Conduct all radiation management activities in compliance with the radiation protection standards of 252:410-20.

(3) Duty to mitigate. Take all reasonable steps to minimize or correct any adverse impact on health, safety, property and the environment which results from radiation associated with the use, operation, storage, or disposal of radioactive material or radiation machines.

(4) **Notification of events.** Notify the DEQ when:

(A) a radiation protection standard has been exceeded and notice is required by 10 CFR 20.2202, 20.2203 and 20.2204, incorporated by reference in Subchapter 20;

(B) any medical event occurs and notice is required by 252:410-11-4 and/or 10 CFR 35.33, incorporated by reference in Subchapter 10;

(C) any source of radiation is lost or stolen ~~as~~ and notice is required by 10 CFR 20.2201, incorporated by reference in Subchapter 20; ~~or~~

(D) a radiation machine is lost or stolen and notice is required by OAC 252:410-20-7(a);

(E) an incident has occurred and reporting is required by OAC 252:410-20-7(b);

(F) any incident occurs involving a radiation machine that is reportable under OAC 252:410-15-10; or

(~~D~~G) notice is required under the ~~State Agreement program~~ Radioactive Materials Program by 10 CFR 30.50, 34.101, 35.33, 36.83, 39.77, 40.60, 70.50 and 71.95, incorporated by reference in Subchapter 10.

(b) **Records and reporting.** All records and reports required by this Chapter must be clear and legible. Personnel monitoring records must be maintained until the holder is no longer subject to radiation management requirements. All other records must be maintained for a minimum of three (3) years unless a longer period of time is specified in this Chapter. Electronic media capable of producing accurate and complete records throughout the required retention period may be used; however, DEQ may require printed documents for its reviews. Any person subject to this Chapter must:

(1) **Duty to provide information.** Furnish to DEQ, within the time specified, any information which DEQ may request to determine the extent of compliance with this Chapter and whether cause exists for renewing, amending, suspending, or revoking a radiation management authorization.

(2) **Errors and omissions.** Promptly submit correct facts or information to DEQ when the person becomes aware that a material fact was submitted erroneously or omitted from a radiation management application or in any report or notice required by this Chapter or an authorization.

(c) **Signs, labels and words of warning.** All signs, labels and other warning devices required by this Chapter must be in plain sight with words or symbols that are easy to read and understand.

(d) **Inspections and tests.** Any person subject to this Chapter:

(1) shall give DEQ at all reasonable times opportunity to inspect sources of radiation, the premises and facilities where the sources of radiation are used or stored and records required to be maintained by this Chapter. All reasonable times shall include normal hours of operation as well as any time when radiation management activities are being performed outside of normal hours of operation

(2) may be required by DEQ to test or allow DEQ to test facilities and equipment related to the use and storage of radiation machines and radioactive materials to verify the adequacy of protections from radiation.

(e) **Severability.** Should any of the rules of this Chapter be declared unconstitutional or invalid for any reason, the remainder of the rules shall not be affected thereby.

252:410-1-5. Compliance required

(a) **Failure to comply.** Any person to whom this Chapter applies must comply with the requirements of this Chapter and the Radiation Management Act, 27A O.S. ~~§2-9-101~~ § 2-9-101 *et seq.* Failure to register or become certified, permitted, licensed, or recognized under this Chapter does not negate compliance with requirements that apply to registrants, certificate holders, permittees, licensees and recognized persons. Failure to comply may result in denial of applications or registrations, administrative penalties, suspension and/or revocation of authorizations and civil and/or criminal prosecution. Failure to comply includes:

(1) knowingly making any false statement or representation in or omitting material information from any required application, certification, registration, notice, analysis. or report;

(2) altering any test sample or report;

(3) rendering inaccurate any required monitoring device or control; and

(4) exposing others to radiation through reckless disregard of required safety standards.

(b) **Administrative enforcement.** Any violation of the requirements in Chapter 410 is subject to enforcement in accordance with the provisions of 27A O.S. § 2-3-501 *et seq.*, and OAC 252:4, Department of Environmental Quality Rules of Practice and Procedure.

SUBCHAPTER 3. RADIATION MACHINES - COMMON REQUIREMENTS

PART 1. GENERAL PROVISIONS

252:410-3-7. Out-of-state radiation machines

(a) **Permitting, registration and notice.** Before bringing a non-exempt radiation machine into the state to use at a temporary ~~work~~ job site, a person must:

(1) Hold a DEQ radiation machine operating permit or reciprocity recognition and have registered the machine with DEQ; and

(2) Give written notice to DEQ at least three (3) working days before the proposed date of use. Notifications of less than 3 days may be approved by DEQ if the applicant demonstrates justifying circumstances. The notice shall provide:

(A) numbers and types of machines;

(B) nature, start date and duration of use;

(C) exact location(s) of use;

(D) contact names, Oklahoma addresses and telephone numbers for persons responsible for the machine while it is in the state, and for permittees with no permanent address in the state, the designated service agent; and

(E) such other information as the DEQ may reasonably request.

(b) **Compliance required.** While in the state, a recognized person must comply with all applicable rules of the DEQ.

PART 3. RADIATION SAFETY MANAGEMENT

252:410-3-33. Recordkeeping

(a) **Subchapters 11 through 17.** Unless exempted, persons subject to Subchapters 11, 13, 15 and/or 17 must maintain the following records:

(1) DEQ permit and registration documentation;

(2) a written radiation management program;

(3) written operating and emergency procedures which include restrictions required for the safe operation of each machine;

(4) *required records of surveys and survey reports;

(5) *survey instrument calibration records;

(6) computer verifications, repair, maintenance, corrective actions and modifications;

(7) machine manufacturer specifications and instructions,

(8) personnel monitoring records;

(9) a copy of all correspondence to and from DEQ regarding each machine; and

(10) training records giving dates, locations, topics and hours of both initial and refresher training, instructor names, sign-in sheets, a copy of each examination given, and examination scores.

(b) **Additional requirements for Subchapter 11.** Persons subject to Subchapter 11 must maintain the following additional records:

(1) a record of each medical event which identifies the date, operator, practitioner, radiological physicist and describes the incident and any corrective actions,

(2) records of leakage radiation measurements in accordance with 252:410-11-51;

(3) recorded maximum value of the absorbed dose rate as specified by the manufacturer for machine parameters in accordance with 252:410-11-64;

(4) *calibrations of machines and dosimetry systems in accordance with 252:410-11-73 and 74;

(5) *spot-check measurements, qualified expert reviews and corrective actions taken to remedy identified deficiencies in accordance with 252:410-11-76;

(6) records of acceptance testing and initial surveys in accordance with 252:410-11-72; ~~and~~

(7) *records of maintenance and modifications; and

(8) A current copy of the following documents must be maintained at or in the area of the control panel:

(A) operating and emergency procedures;

(B) quality assurance and quality control plan;

(C) manufacturer specifications and instructions;

(D) record of the maximum value of the absorbed dose rate specified by the manufacturer for machine parameters;

(E) latest machine/system calibration; and

(F) records of the most recent spot-check measurements and qualified expert reviews.

(c) **Additional requirements for Subchapter 15.** Persons subject to Subchapter 15 must maintain ~~*records of quarterly system inspections and maintenance~~ the following additional *records:

(1) *records of daily system inspections and maintenance;

(2) utilization records;

(3) records of alarm system and entrance control checks;

(4) records of personnel monitoring;

(5) at each temporary job site, a copy of the operating and emergency procedures, applicable rules, latest survey records, records of equipment problems identified in daily checks at the temporary job site, and, when operating under reciprocity, a copy of the primary authorization or permit authorizing the use of the licensed machines, and for each survey instrument at each temporary job site, verification of current calibration.

(d) **Additional requirements for Subchapter 17.** Persons subject to Subchapter 17 must maintain the current electrical circuit diagrams of the particle accelerator and its safety interlock systems.

(e) **Date and signature.** Records marked with asterisks (*) must also contain the date and signature of the individual performing the service.

(f) **Location.** All records must be kept in the principal office of the permittee and made available for DEQ review. ~~A current copy of the following documents must be maintained at or in the area of the control panel:~~

~~(1) operating and emergency procedures;~~

~~(2) quality assurance and quality control plan;~~

~~(3) manufacturer specifications and instructions;~~

~~(4) record of the maximum value of the absorbed dose rate specified by the manufacturer for machine parameters;~~

~~(5) latest machine/system calibration; and~~

~~(6) records of the most recent spot check measurements and qualified expert reviews.~~

(g) **Duration.** Records shall be kept for the duration specified in Subchapter 1.

[OAR Docket #04-826; filed 5-3-04]

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

[OAR Docket #04-827]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Certification of Industrial ~~Reglators~~ Radiographers
252:410-5-5 [AMENDED]
Subchapter 7. Radiation Management Authorizations; Procedures and Requirements
Part 3. Reciprocity Recognition
252:410-7-33 [AMENDED]
252:410-7-34 [AMENDED]

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

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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The Department is proposing to amend Section 5 of Subchapter 5 and Part 3 of Subchapter 7, both of which deal with reciprocity recognition, as a single action. The proposed change to Subchapter 5 provides a means to authorize industrial radiographers certified by an out-of-state entity to operate under reciprocity in Oklahoma. The change conforms the duration of Oklahoma's authorization to the term of the primary authorization from the other certifying entity. The proposed changes to Subchapter 7 add to and clarify existing notice and information requirements for persons operating under reciprocity in Oklahoma.
CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, P. O. Box 1677, Oklahoma City, OK 73101-1677, (405) 702-5100

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 11, 2004:

SUBCHAPTER 5. CERTIFICATION OF INDUSTRIAL ~~REGLATORS~~ RADIOGRAPHERS

252:410-5-5. Out-of-state certification; Reciprocity recognition

An industrial radiographer certified by an out-of-state entity can become authorized under reciprocity to perform industrial radiography in Oklahoma without becoming DEQ-certified if the individual or his licensee-employer registers the individual's name, address, card number, expiration date, and name and address of the certifying entity with DEQ before the individual performs radiography work in Oklahoma. An applicant for reciprocity recognition must comply with the rules in Part 3 of Subchapter 7, except that the recognition of an industrial radiographer certification will not be limited to 180 days in a year but will remain valid until the primary authorization has expired or has been suspended or revoked by the issuing entity.

SUBCHAPTER 7. RADIATION MANAGEMENT AUTHORIZATIONS; PROCEDURES AND REQUIREMENTS

PART 3. RECIPROCITY RECOGNITION

252:410-7-33. eciprocity recognition approval and duration

(a) **Approval.** Applications for reciprocity recognition shall be deemed approved and issued by DEQ unless DEQ sends written notice of denial or a request for additional information to the applicant within 30 days after the date the application was received by DEQ. DEQ may deny a recognition, approve recognition with restrictions or amend a recognition for cause, including written notice from another licensing entity that the entity has taken enforcement action against the applicant for failure to comply with the terms of the corresponding authorization issued by the entity.

(b) **Duration.**

(1) DEQ recognitions are valid for one (1) year from the date of approval. Recognitions authorize up to 180 days of radiation activities in the state during that year.

(2) The recognition will remain effective for ~~that~~ such period of time as ~~long as~~ the registrant remains in compliance with the terms of the recognition and this Chapter, and the underlying primary authorization remains valid and has neither expired nor been suspended or revoked by the issuing entity.

(c) **Revocation; suspension.** DEQ may revoke or suspend a reciprocity recognition for failure to comply as described in 252:410-1-5. Notice of the revocation may be given by DEQ to out-of-state authorizing entities.

(d) **Action by reciprocating entities.** Written notice received by DEQ regarding enforcement actions that are taken by another entity against a DEQ authorized person for violations of corresponding radiation management authorizations is subject to the Oklahoma Open Records Act, 51 O.S. § 24A.1 *et seq.*

252:410-7-34. Duties of recognized persons

Persons operating in ~~the state~~ Oklahoma under a reciprocity recognition are subject to the same requirements of this Chapter that apply to persons holding specific DEQ authorizations and must:

(1) **Compliance.** Be familiar with and comply with all the requirements of this Chapter, including radiation safety, notice and registration, that apply to the radiation management activities for which recognition has been approved;

(2) **Scope.** Ensure the work performed in Oklahoma does not exceed the scope of work prescribed by the primary authorization or the conditions of the recognition;

(3) **Notice of out-of-state enforcement action.** Give DEQ written notice of the initiation of any enforcement action ~~taken~~ against ~~him that involves a corresponding authorization~~ the person or primary authorization; and

(4) **Advance notice.** Give at least three (3) days advance written notice to DEQ ~~in advance of~~ before commencing ~~new~~ work in ~~the state describe~~ Oklahoma, including a description of the activities, ~~give~~ exact work location(s); name of contact person in Oklahoma; phone number where worker(s) may be reached while in Oklahoma; and ~~provide~~ a schedule of dates. Notifications of

less than three (3) days may be approved by DEQ if the applicant demonstrates justifying circumstances.

[OAR Docket #04-827; filed 5-3-04]

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

[OAR Docket #04-828]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 10. ~~State Agreement~~ Radioactive Materials Program
Part 1. General Provisions
252:410-10-1 [AMENDED]
252:410-10-2 [AMENDED]
252:410-10-3 [AMENDED]
252:410-10-4 [AMENDED]
252:410-10-5 [AMENDED]
Part 19. Worker Communications
252:410-10-19 [AMENDED AND RENUMBERED TO 252:410-23-4]
Part 30. Byproduct Material; Licensing in General
252:410-10-30 [AMENDED]
Part 32. Byproduct Material: Specific Licenses for Manufacturing and Transferring Certain Items
252:410-10-32 [AMENDED]
Part 34. Industrial Radiographic Operations
252:410-10-34 [AMENDED]
Part 35. Medical Use of Byproduct Material
252:410-10-35 [AMENDED]
Part 36. Irradiator Licenses and Radiation Safety Requirements
252:410-10-36 [AMENDED]
Part 39. Well Logging
252:410-10-39 [AMENDED]
252:410-10-39.1 [NEW]
Part 70. Special Nuclear Material: Licensing
252:410-10-70 [AMENDED]
Part 71. Packaging and Transporting Radioactive Material
252:410-10-71 [AMENDED]
Part 101. ~~State Agreement~~ Radioactive Materials Program Fees
252:410-10-101 [AMENDED]
252:410-10-102 [AMENDED]
252:410-10-103 [AMENDED]
252:410-10-104 [AMENDED]
252:410-10-105 [AMENDED]
252:410-10-106 [AMENDED]
252:410-10-107 [AMENDED]
252:410-10-108 [AMENDED]
252:410-10-109 [AMENDED]
252:410-10-110 [AMENDED]
252:410-10-111 [AMENDED AND RENUMBERED FROM 252:410-10-116]
252:410-10-114 [AMENDED]
252:410-10-116 [AMENDED AND RENUMBERED TO 252:410-10-111]
252:410-10-117 [AMENDED]
252:410-10-118 [AMENDED]
252:410-10-119 [AMENDED]
252:410-10-120 [REVOKED]
Part 150. Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under Section 274 of the Federal Atomic Energy Act
252:410-10-150 [AMENDED]

AUTHORITY:
Environmental Quality Board and Radiation Management Advisory Council powers and duties; 27A O.S., §§ 2-2-101, 2-2-201, 2-9-104, and 2-9-105
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INCORPORATIONS BY REFERENCE:
Incorporated standards:
10 CFR, § 34.3, 10 CFR, § 70.17 and 10 CFR, § 150.3
Incorporating rules:
252:410-10-34, 252:410-10-70 and 252:410-10-150.10
Availability:
From the contact person
ANALYSIS:
The proposed rulemaking would expand the license program to include radium sealed sources and accelerator-produced material, making the use of those sources of radiation subject to regulatory requirements for licensing and inspection in the same manner as the use of byproduct material. The title of the Subchapter would be changed to Radioactive Materials Program. These changes would result also in a new fee charged for the issuance of licenses to unlicensed users of radium sealed sources and accelerator-produced material. Also proposed are deadline dates, and transition requirements, for the issuance of licenses or license amendments and compliance with program requirements for facilities using radium sealed sources and accelerator-produced material. Fee increases are proposed for most fee categories. Part 19 of this Subchapter would be deleted and moved to a new Subchapter, renumbered as Subchapter 23.
CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, P. O. Box 1677, Oklahoma City, OK 73101-1677, (405) 702-5100.

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 11, 2004:

SUBCHAPTER 10. ~~STATE AGREEMENT~~ RADIOACTIVE MATERIALS PROGRAM

PART 1. GENERAL PROVISIONS

252:410-10-1. ~~State Agreement program incorporations by reference~~ Radioactive Materials Program

(a) **Scope.** ~~State Agreement program incorporations by reference include the provisions listed in Parts 19, 30 through 36, 39, 40, 61, 70, 71 and 150 of this Subchapter.~~

(1) The rules in this Subchapter establish license requirements for the following categories of radioactive materials: byproduct material, radium sealed sources, accelerator-produced material, source material and special nuclear material.

(2) License requirements incorporated by reference from 10 CFR are applicable requirements for all categories of radioactive materials within the scope of this Subchapter. Requirements for byproduct material are applicable requirements for accelerator-produced material and radium sealed sources as well as byproduct material.

(b) **Exclusions.** ~~When the DEQ State Agreement program becomes effective, the following 10 CFR jurisdiction will remain~~ Responsibility for the following regulatory requirements remains with the NRC:

(1) **In 10 CFR 20.** Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits § 20.2203(c); Reports of individual monitoring. § 20.2206(a)(1), (a)(3), (a)(4) and (a)(5);

(2) **In 10 CFR 30.** Terms and conditions of licenses, § 30.34 (d), (e)(1) and (e)(3); Transfer of byproduct material, § 30.41 (b)(6); Tritium reports, § 30.55;

(3) **In 10 CFR 32.** Subpart A, Exempt concentrations and items, §§ 32.14, 32.15, 32.16, 32.18 through 32.23, 32.25 through 32.29, and 32.40; Subpart D, Specifically licensed items, § 32.210;

(4) **In 10 CFR 40.** General Provisions, §§ 40.2a and 40.3; Exemptions, §§ 40.11, 40.12 and 40.13 (a), (b), (c)(1) through (5), (c)(7) through (9), 40.14; General Licenses, §§ 40.20 through 40.24; 40.26 through 40.28; License Applications, §§ 40.31 (f) through (l), §§ 40.32 (d) through (g), and §§ 40.33 through 40.38; Licenses, §§ 40.41 (d), (e)(1) and (3), (f) and (g), § 40.42 and § 40.46; Transfer of Source Material, § 40.51 (b)(6); Records, Reports, and Inspections, § 40.60 (c)(3), §§ 40.64 through 40.67; Appendix A;

(5) **In 10 CFR 61.** Standards for issuance of a license, § 61.23 (i) and (j) regarding physical security information and criticality safety procedures for special nuclear material possessed prior to disposal;

(6) **In 10 CFR 70.** Regulation of special nuclear material for spent fuel, high level radioactive waste and uranium enrichment facilities, §§ 70.1(c),(d) and (e); Department of Defense, § 70.13; Foreign military aircraft, § ~~70.13a~~ 70.14; Strategic special nuclear material transport, § 70.20a; Carriers of transient shipments regulated under 10 CFR 73, § 70.20b; Application requirements for uses specified in Section 274(c) of the Atomic Energy Act, §§ 70.21(a)(1),(c),(f),(g) and (h); § 70.22 (b),(c) and (f) through (n); § 70.23 (a)(6) through (12) and (b); § 70.23a; § 70.24; § 70.32 (a)(1), (a)(4) through (7),(b)(1),(b)(3),(b)(4),(c) through (k); §70.37; § 70.40; § 70.42(b)(6); § 70.44; § 70.51(c),(d) and (e); § 70.52 through § 70.54; § 70.55(c); § 70.56 (c) and (d); 70.57 through §70.59; and § 70.62;

(7) **In 10 CFR 71.** Jurisdiction over package approvals and fissile material, § 71.13 (c) and (d); § 71.24; Subpart D, Application for Package Approval; Subpart E, Package Approval Standards; Subpart F, Package, Special Form, and LSA-III Tests; and § 71.83; and

(8) **In 10 CFR 150.** Exemptions and continued NRC authority in Agreement States, § 150.7; § 150.10 and § 150.14 through §150.19; § 150.20(c) and (d); § 150.21; § 150.31 and §150.32.

(c) **Effective date.**

(1) Except for those sources listed in paragraph (2) of this subsection, ~~The~~ the incorporations by reference and fee schedules of this Subchapter shall become effective ~~on the date specified in the Agreement between the NRC and the State of Oklahoma providing for the discontinuance of the regulatory authority of the NRC and assumption of the program by DEQ~~ September, 29, 2000.

(2) For accelerator-produced material and radium sealed sources the effective date for requirements of this Subchapter is August 1, 2004.

(d) **Transfer of licenses.** ~~On the effective date of this Subchapter~~ Effective September 29, 2000, all unrevoked and unexpired NRC licenses and plan approvals over which jurisdiction is transferred to DEQ shall remain valid and become subject to the laws and rules of DEQ.

252:410-10-2. Using provisions incorporated by reference as state rules

(a) **Extent of incorporations by reference.** Each regulation from 10 CFR is incorporated in its entirety unless specified otherwise.

(b) **Interfacing terms.** For purposes of the ~~State Agreement program~~ Radioactive Materials Program, these 10 CFR terms shall be interpreted as follows unless specified otherwise in specific incorporating sections:

(1) **"Byproduct material"** means and includes byproduct material, accelerator-produced material and radium sealed sources.

(~~1~~2) **"Commission"** or the **"Nuclear Regulatory Commission"** or **"NRC"** means DEQ.

(~~2~~3) **"Commissioner"**, **"Regional Administrator"**, **"Administrator"**, **"Director"** or **"Executive Director"** means DEQ's Executive Director.

(~~3~~4) **"License"** means a valid NRC or ~~State Agreement~~ Radioactive Materials Program license issued under or subject to DEQ jurisdiction.

(~~4~~5) **"Licensee"** means the holder of a NRC or ~~State Agreement~~ Radioactive Materials Program license.

(~~5~~6) **"NRC Operation Center"** means DEQ's hotline, 1-800/522-0206.

(~~6~~7) **"Order"** means an administrative order issued by DEQ.

(~~7~~8) **"10 CFR 170.31"** or **"Schedule of Material Fees"** means those fees listed in 252:410-10-101 through ~~120~~ 121.

(c) **Alternate forms.** In lieu of a referenced NRC form, persons reporting to DEQ may use their own computer-generated form or a ~~State Agreement program~~ Radioactive Materials Program form available from DEQ.

(d) **Inconsistencies.** Whenever a requirement which has been incorporated by reference is inconsistent with another rule of this Chapter, the requirement incorporated by reference shall prevail.

(e) **Exceptions.** The provisions for enforcement in 10 CFR Part 2, subpart B referenced in 10 CFR 30.10 (b), 40.10(b), 61.9b (b) and 70.10 are not incorporated by reference. Any violation of Chapter 410 rules is subject to enforcement in accordance with the requirements of 27A O.S. §2-3-501 *et seq.*, and OAC 252:4, Department of Environmental Quality Rules of Practice and Procedure.

252:410-10-3. ~~State Agreement program~~ Radioactive Materials Program authorizations

(a) **License.** ~~Subject to the exemptions of 10 CFR which are incorporated by reference in this Chapter and the agreement between the State of Oklahoma and NRC~~ Except as otherwise specifically provided in this Chapter or in the State Agreement, a person shall only manufacture, produce, transfer, receive, acquire, own, possess or use radium sealed sources, byproduct, accelerator-produced, source or special nuclear material in the ~~state~~ State of Oklahoma when authorized under an NRC or agreement state general license, a DEQ-issued specific license, or a DEQ reciprocity recognition.

(b) **Certification.** Prior to performing work as an industrial radiographer using sealed sources in the state, an individual must be authorized through either DEQ certification or DEQ reciprocity recognition in accordance with Subchapters 5 and 7.

(c) **Related provisions.** Persons subject to this Subchapter are also subject to the requirements of Subchapters 1, 7, 9 and 20 and may be subject to Subchapter 21.

(d) **Transition requirements for radium sealed sources and accelerator-produced material.** Any person who manufactures, produces, transfers, receives, acquires, owns, possesses or uses radium sealed sources or accelerator-produced material shall submit a complete license application and meet training and certification requirements in accordance with the following schedule.

(1) Any person who manufactures, produces, transfers, receives, acquires, owns, possesses or uses radium sealed sources or accelerator-produced material, but does not hold a current Radioactive Materials Program license shall submit a license application for such material by January 1, 2005.

(2) Any Radioactive Materials Program licensee shall submit an application for license amendment or renewal covering radium sealed sources by September 1, 2006. On or before September 1, 2004 the licensee shall submit to DEQ a statement signed by a responsible official and certifying that, except for the submission of an application for license amendment or renewal, the licensee's program for radium sealed sources meets all requirements of this Subchapter.

(3) Any Radioactive Materials Program licensee shall submit an application for license amendment or renewal covering accelerator-produced material by September 1, 2007. On or before September 1, 2004 the licensee shall submit to DEQ a statement signed by a responsible official and certifying that, except for the submission of an application for license amendment or renewal, the licensee's program for accelerator-produced material meets all requirements of this Subchapter.

(4) Any person using radium sealed sources or accelerator-produced material shall meet all applicable certification requirements of this Subchapter, including but not limited to radiographer certification and Part 35 medical user training, on or before September 1, 2005.

252:410-10-4. Specific licenses

(a) **Described.** Specific licenses require application, fee payment, and DEQ review and approval. For licensing requirements, an applicant must comply with Subchapter 7 and the following Parts from 10 CFR which are incorporated by reference in this Subchapter:

(1) Domestic licensing of Byproduct Material [Part 30]

(2) Manufacture or initial transfer of items containing byproduct material. [Part 32]

(3) Broad scope licenses, Types A, B and C. [Part 33]

(4) Sealed sources in radiography. [Part 34]

(5) Medical use of byproduct material. [Part 35]

(6) Sealed sources in irradiators. [Part 36]

(7) Licensed materials in well logging. [Part 39]

(8) Low-level radioactive waste disposal. [Part 61]

(9) Special nuclear material not reserved to NRC. [Part 70]

(b) **Term.** Specific licenses ~~are~~ shall be issued for a fixed term, ~~of~~ not to exceed ten (10) years from the date of issuance.

(c) **Reciprocity.** To apply for reciprocity, an applicant must comply with Part 3 of Subchapter 7.

(d) **Other licensing requirements.** For other licensing requirements, see Subchapter 7.

(e) **Criteria for issuance.** To be approvable, a ~~State Agreement~~ Radioactive Materials Program license application must comply with ~~the~~ applicable requirements of the ~~Agreement between the NRC and the State of Oklahoma providing for the discontinuance of the regulatory authority of the NRC and assumption of the program by DEQ~~ state agreement; the Oklahoma Radiation Management Act, 27A O.S. §2-9-101 *et seq.*; and this Chapter.

252:410-10-5. General licenses

General licenses are effective without application, fees or issued authorization. For general licenses, see 10 CFR including the following provisions which are incorporated by reference in this Subchapter:

(1) **Byproduct material general licenses.**

(A) Certain devices and equipment. [§ 31.3 (a) and (d)]

(B) Measuring, gauging or controlling devices. [§ 31.5]

(C) Install devices generally licensed in § 31.5. [§ 31.6]
(D) Luminous safety devices used in aircraft. [§ 31.7]
(E) Americium-241/calibration/reference sources. [§ 31.8]
(F) Ownership. [§ 31.9]
(G) Strontium 90 in ice detection devices. [§ 31.10]
(H) *In vitro* clinical or laboratory testing, including registration. [§ 31.11]

(2) **Source material general licenses.** Certain industrial products or devices. [§ 40.25]

(3) **Special nuclear material general licenses.**
(A) Calibration or reference sources. [§ 70.19]
(B) Ownership. [§ 70.20]

PART 19. WORKER COMMUNICATIONS

252:410-10-19. 10 CFR 19 incorporations by reference [AMENDED AND RENUMBERED TO 252:410-23-4]

~~(a) **Incorporations by reference.** The following provisions are hereby incorporated by reference from 10 CFR 19, Notices, Instructions and Reports to Workers: Inspection and Investigations:~~

~~(1) **General provisions.**~~
~~(A) 19.1 Purpose~~
~~(B) 19.2 Scope~~
~~(C) 19.3 Definitions~~

~~(2) **Licensee notice requirements.**~~
~~(A) 19.11 Posting of notices to workers~~
~~(B) 19.12 Instruction to workers~~
~~(C) 19.13 Notifications and reports to individuals~~

~~(3) **Compliance inspections.**~~
~~(A) 19.14 Presence of representatives of licensees and workers during inspections~~
~~(B) 19.15 Consultation with workers during inspections~~
~~(C) 19.16 Requests by workers for inspections~~
~~(D) 19.17 Inspections not warranted; informal review~~

~~(4) **Compliance and procedures.** 19.31 Application for exemptions.~~

~~(b) **Related provisions.** DEQ compliance inspections, investigations and administrative enforcement, 27A O.S. § 2-3-501 *et seq.*, and OAC 252:2, Procedures of the Department of Environmental Quality, also apply.~~

PART 30. BYPRODUCT MATERIAL LICENSING IN GENERAL

252:410-10-30. 10 CFR 30 incorporations

The following provisions are hereby incorporated by reference from 10 CFR 30, Rules of General Applicability to Domestic Licensing of Byproduct Material:

(1) **General Provisions.**
(A) 30.1 - Scope
(B) 30.2 - Resolution of conflict
(C) 30.3 - Activities requiring license
(D) 30.4 - Definitions
(E) 30.7 - Employee protection
(F) 30.9 - Completeness and accuracy of information
(G) 30.10 - Deliberate misconduct

(2) **Exemptions.**
(A) 30.11 - Specific exemptions
(B) 30.12 - Persons using byproduct material under certain Department of Energy and NRC contracts
(C) 30.13 - Carriers
(D) 30.14 - Exempt concentrations
(E) 30.15 - Certain items containing byproduct material
(F) 30.16 - Resins containing Scandium-46 and designed for sand-consolidation in oil wells
(G) 30.18 - Exempt quantities
(H) 30.19 - Self luminous products containing tritium, krypton-85 or promethium-147
(I) 30.20 - Gas and aerosol detectors containing byproduct material
(J) 30.21 - Radioactive drug: Capsules containing carbon-14 urea for *in vitro vivo* diagnostic use for humans

(3) **Licenses.**
(A) 30.31 - Types of licenses
(B) 30.32 (a) through (d) and (g) through (i) - Application for specific licenses
(C) 30.33 - General requirements for issuance of specific licenses
(D) 30.34 - Terms and conditions of licenses, except (d), (e)(1) and (e)(3)
(E) 30.35 - Financial assurance and recordkeeping for decommissioning
(F) 30.36 - Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas, except (a)(2)
(G) 30.37 - Application for renewal of licenses
(H) 30.38 - Application for amendment of licenses
(I) 30.39 - Commission action on applications to renew or amend
(J) 30.41 - Transfer of byproduct material, except (b)(6)

(4) **Records, inspections, tests and reports.**
(A) 30.50 - Reporting requirements
(B) 30.51 - Records
(C) 30.52 - Inspections
(D) 30.53 - Tests

(5) **Administrative procedures.**
(A) 30.61 - Modification and revocation of licenses
(B) 30.62 - Right to cause the withholding or recall of byproduct material

(6) **Schedules.**
(A) 30.70 - Schedule A - Exempt concentrations
(B) 30.71 - Schedule B - Exempt quantities

(C) 30.72 - Schedule C - Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.

(7) **Appendices.**

(A) Appendix A - Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(B) Appendix B - Quantities of licensed material requiring labeling.

(C) Appendix C - Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(D) Appendix D - Criteria relating to use of financial tests and self-guarantee for providing reasonable assurance of funds for decommissioning by commercial companies that have no outstanding rated bonds

(E) Appendix E - Criteria relating to use of financial tests and self-guarantee for providing reasonable assurance of funds for decommissioning by nonprofit colleges, universities, and hospitals

PART 32. BYPRODUCT MATERIAL: SPECIFIC LICENSES FOR MANUFACTURING AND TRANSFERRING CERTAIN ITEMS

252:410-10-32. 10 CFR 32 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 32, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material:

(1) **General provisions.**

(A) 32.1 - Purpose and scope, excluding issuance of certificates of registration~~ to manufacturers of sealed sources and devices~~

(B) 32.2 - Definitions

(C) 32.3 - Maintenance of records

(2) **Subpart A; Exempt concentrations and items.**

(A) 32.11 - Introduction of byproduct material in exempt concentrations into products or materials and transfer of ownership or possession: Requirements for license

(B) 32.12 - Same: Records and material transfer reports

(C) 32.13 - Same: Prohibition of introduction

(D) 32.17 - Resins containing scandium-46 and designed for sand-consolidation in oil wells: Requirements for license to manufacture, or initially transfer for sale or distribution

(E) 32.24 - Organ doses table

(3) **Subpart B; Generally licensed items.**

(A) Byproduct material contained in devices for use under 31.5:

(i) 32.51 - Requirements for license to manufacture or initially transfer

(ii) 32.51a - Conditions of licenses

(iii) 32.52 - Material transfer reports and records

(B) Luminous safety devices for use in aircraft:

(i) 32.53 - Requirements for license to manufacture, assemble, repair or initially transfer

(ii) 32.54 - Labeling of devices

(iii) 32.55 - Quality assurance; prohibition of transfer

(iv) 32.56 - Material transfer reports

(C) Calibration or reference sources containing americium 241:

(i) 32.57 - Requirements for license to manufacture or initially transfer

(ii) 32.58 - Labeling of devices

(iii) 32.59 - Leak testing of each source

(D) Ice detection devices containing strontium-90:

(i) 32.61 - Requirements for license to manufacture or initially transfer

(ii) 32.62 - Quality assurance; prohibition of transfer

(E) 32.71 - Manufacture and distribution of byproduct material for certain *in vitro* clinical or laboratory testing under general license

(F) 32.72 - Manufacture, preparation or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under part 35

(G) 32.74 - Manufacture and distribution of sources or devices containing byproduct material for medical use

(4) **Subpart B Schedules.**

(A) 32.101 - Schedule B, prototype tests for luminous safety devices for use in aircraft

(B) 32.102 - Schedule C, prototype tests for calibration or reference sources with americium-241

(C) 32.103 - Schedule D, prototype tests for ice detection devices with strontium 90

(5) **Subpart C; Quality control sampling procedures.** 32.110 - Acceptance sampling procedures under certain specific licenses.

PART 34. INDUSTRIAL RADIOGRAPHIC OPERATIONS

252:410-10-34. 10 CFR 34 incorporations

The following provisions are hereby incorporated by reference from 10 CFR Part 34, Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations:

(1) **General provisions.**

(A) 34.1 - Purpose and scope

(B) ~~34.2~~ 34.3 - Definitions

(2) **Subpart B; Specific licensing provisions.**

(A) 34.11 - Application for a specific license

(B) 34.13 - Specific license for industrial radiography

(3) **Subpart C; Equipment.**

(A) 34.20 - Performance requirements for industrial radiography equipment

(B) 34.21 - Limits on external radiation levels from storage containers and source changers

(C) 34.23 - Locking of radiographic exposure devices, storage containers and source changers
(D) 34.25 - Radiation survey instruments
(E) 34.27 - Leak testing and replacement of sealed sources
(F) 34.29 - Quarterly inventory
(G) 34.31 - Inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers and survey instruments
(H) 34.33 - Permanent radiographic installations
(I) 34.35 - Labeling, storage and transportation

(4) **Subpart D; Radiation safety requirements.**
(A) 34.41 - Conducting industrial radiographic operations
(B) 34.42 - Radiation safety officer for industrial radiography
(C) 34.43 - Training
(D) 34.45 - Operating and emergency procedures
(E) 34.46 - Supervision of radiographers' assistants
(F) 34.47 - Personnel monitoring
(G) 34.49 - Radiation surveys
(H) 34.51 - Surveillance
(I) 34.53 - Posting

(5) **Subpart E; Recordkeeping requirements.**
(A) 34.61 - Records of the specific license for industrial radiography
(B) 34.63 - Records of the receipt and transfer of sealed sources
(C) 34.65 - Records of radiation survey instruments
(D) 34.67 - Records of leak testing of sealed sources and devices containing depleted uranium
(E) 34.69 - Records of quarterly inventory
(F) 34.71 - Utilization logs
(G) 34.73 - Records of inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers and survey instruments
(H) 34.75 - Records of alarm system and entrance control checks at permanent radiographic installations
(I) 34.79 - Records of training and certification
(J) 34.81 - Copies of operating and emergency procedures
(K) 34.83 - Records of personnel monitoring procedures
(L) 34.85 - Records of radiation surveys
(M) 34.87 - Form of records
(N) 34.89 - Location of documents and records

(6) **Subpart F; Notifications** - 34.101

(7) **Appendix** - Appendix A to 10 CFR 34 - Radiographer Certification.

PART 35. MEDICAL USE OF BYPRODUCT MATERIAL

252:410-10-35. 10 CFR 35 incorporations by reference

(a) **Incorporations by reference.** The following provisions are hereby incorporated by reference from 10 CFR 35, Medical Use of Byproduct Material:

(1) **Subpart A; General Information.**
(A) 35.1 - Purpose and scope
(~~A~~B) 35.2 - Definitions
(~~B~~C) 35.5 - Maintenance of records
(~~C~~D) 35.6 - Provisions for research involving human subjects
(~~D~~E) 35.7 - FDA, other Federal and State requirements

(2) **Licensing.**
(A) 35.11 - License required
(B) 35.12 - Application for license, amendment or renewal
(C) 35.13 - License amendments
(D) 35.14 - Notifications
(E) 35.15 - Exemptions regarding Type A specific licenses of broad scope
(F) 35.18 - License issuance
(G) 35.19 - Specific exemptions

(3) **Subpart B; General Administrative Requirements.**
(A) 35.20 - ALARA program
(B) 35.21 - Radiation Safety Officer
(C) 35.22 - Radiation Safety Committee
(D) 35.23 - Statements of authority and responsibilities
(E) 35.25 - Supervision
(F) 35.29 - Administrative requirements that apply to the provision of mobile nuclear medicine service
(G) 35.31 - Radiation safety program changes
(H) 35.32 - Quality management program
(I) 35.33 - Notifications, reports and records of misadministrations
(J) 35.49 - Suppliers for sealed sources or devices

(4) **Subpart C; General Technical Requirements.**
(A) 35.50 - Possession, use, calibration and check of dose calibrators
(B) 35.51 - Calibration and check of survey instruments
(C) 35.52 - Possession, use, calibration and check of instruments to measure dosages of alpha- or beta-emitting radionuclides
(D) 35.53 - Measurement of dosages of unsealed byproduct material for medical use
(E) 35.57 - Authorization for calibration and reference sources
(F) 35.59 - Requirements for possession of sealed sources and brachytherapy sources
(G) 35.60 - Syringe shields and labels
(H) 35.61 - Vial shields and labels
(I) 35.70 - Surveys for contamination and ambient radiation exposure rate
(J) 35.75 - Release of individuals containing radiopharmaceuticals or permanent implants

(K) 35.80 - Technical requirements that apply to the provision of mobile nuclear medicine service
(L) 35.90 - Storage of volatiles and gases
(M) 35.92 - Decay-in-storage

(5) **Subpart D; Uptake, dilution and excretion.**
(A) 35.100 - Use of unsealed byproduct material in uptake, dilution, excretion studies
(B) 35.120 - Possession of survey instrument

(6) **Subpart E; Imaging and localization.**
(A) 35.200 - Use of unsealed byproduct material for imaging and localization studies
(B) 35.204 - Permissible molybdenum-99 concentration
(C) 35.205 - Control of aerosols and gases
(D) 35.220 - Possession of survey instruments

(7) **Subpart F; Radiopharmaceuticals for therapy.**
(A) 35.300 - Use of unsealed byproduct material for therapeutic administration
(B) 35.310 - Safety instruction
(C) 35.315 - Safety precautions
(D) 35.320 - Possession of survey instruments

(8) **Subpart G; Sources for brachytherapy.**
(A) 35.400 - Use of sources for brachytherapy
(B) 35.404 - Release of patients or human research subjects treated with temporary implants
(C) 35.406 - Brachytherapy sources inventory
(D) 35.410 - Safety instruction
(E) 35.415 - Safety precautions
(F) 35.420 - Possession of survey instrument

(9) **Subpart H; Sealed sources for diagnosis.**
(A) 35.500 - Use of sealed sources for diagnosis
(B) 35.520 - Availability of survey instrument

(10) **Subpart I; Teletherapy.**
(A) 35.600 - Use of a sealed source in a teletherapy unit
(B) 35.605 - Maintenance and repair restrictions
(C) 35.606 - License amendments
(D) 35.610 - Safety instruction
(E) 35.615 - Safety precautions
(F) 35.620 - Possession of survey instrument
(G) 35.630 - Dosimetry equipment
(H) 35.632 - Full calibration measurements
(I) 35.634 - Periodic spot-checks
(J) 35.636 - Safety checks for teletherapy facilities
(K) 35.641 - Radiation surveys for teletherapy facilities
(L) 35.643 - Modification of teletherapy unit or room before beginning a treatment program
(M) 35.645 - Reports of teletherapy surveys, checks, tests and measurements
(N) 35.647 - Five-year inspection

(11) **Subpart J; Training and experience requirements.**
(A) 35.900 - Radiation Safety Officer
(B) 35.901 - Training for experienced Radiation Safety Officer
(C) 35.910 - Training for uptake, dilution, excretion studies
(D) 35.920 - Training for imaging and localization studies
(E) 35.930 - Training for therapeutic use of unsealed byproduct material
(F) 35.932 - Training for treatment of hyperthyroidism
(G) 35.934 - Training for treatment of thyroid carcinoma
(H) 35.940 - Training for use of brachytherapy sources
(I) 35.941 - Training for ophthalmic use of strontium-90
(J) 35.950 - Training for use of sealed sources for diagnosis
(K) 35.960 - Training for teletherapy
(L) 35.961 - Training for teletherapy physicist
(M) 35.970 - Training for experienced authorized users
(N) 35.971 - Physician training in a three month program
(O) 35.972 - Recentness of training
(P) 35.980 - Training for an authorized nuclear pharmacist
(Q) 35.981 - Training for experienced nuclear pharmacists

(b) **Exceptions.** The provisions for communication with NRC of 10 CFR § 30.6 referenced in §§ 35.12, 35.14, 35.32, 35.59 and 35.645 are not incorporated by reference. All correspondence regarding license requirements, and any notifications or reports required by this Part, shall be directed to DEQ.

PART 36. IRRADIATOR LICENSES AND RADIATION SAFETY REQUIREMENTS

252:410-10-36. 10 CFR 36 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 36, Licenses and Radiation Safety Requirements for Irradiators:

(1) **Subpart A; General provisions.**
(A) 36.1 - Purpose and scope
(B) 36.2 - Definitions

(2) **Subpart B; Specific licensing requirements.**
(A) 36.11 - Application for a specific license, except fees and fee exemptions which are set forth in Part 101 of this Subchapter
(B) 36.13 - Specific licenses for irradiators
(C) 36.15 - Start of construction
(D) 36.17 - Applications for exemptions
(E) 36.19 - Request for written statements

(3) **Subpart C; Design and performance requirements.**
(A) 36.21 - Performance criteria for sealed sources
(B) 36.23 - Access control
(C) 36.25 - Shielding
(D) 36.27 - Fire protection
(E) 36.29 - Radiation monitors

(F) 36.31 - Control of source movement
(G) 36.33 - Irradiator pools
(H) 36.35 - Source rack protection
(I) 36.37 - Power failures
(J) 36.39 - Design requirements
(K) 36.41 - Construction monitoring and acceptance testing

(4) **Subpart D; Operation of irradiators.**
(A) 36.51 - Training
(B) 36.53 - Operating and emergency procedures
(C) 36.55 - Personnel monitoring
(D) 36.57 - Radiation surveys
(E) 36.59 - Detection of leaking sources
(F) 36.61 - Inspection and maintenance
(G) 36.63 - Pool water purity
(H) 36.65 - Attendance during operation
(I) 36.67 - Entering and leaving the radiation room
(J) 36.69 - Irradiation of explosive or flammable materials

(5) **Subpart E; Records.**
(A) 36.81 - Records and retention periods
(B) 36.83 - Reports

PART 39. WELL LOGGING

252:410-10-39. 10 CFR 39 incorporations by reference

(a) **Incorporations by reference.** The following provisions are hereby incorporated by reference from 10 CFR 39, Licenses and Radiation Safety Requirements for Well Logging:

(1) **Subpart A; General provisions.**
(A) 39.1 - Purpose and scope
(B) 39.2 - Definitions

(2) **Subpart B; Specific licensing requirements.**
(A) 39-11 - Application for a specific license
(B) 39.13 - Specific licenses for well logging
(C) 39.15 - Agreement with well owner or operator
(D) 39.17 - Request for written statements

(3) **Subpart C; Equipment.**
(A) 39.31 - Labels, security and transportation precautions
(B) 39.33 - Radiation detection instruments
(C) 39.35 - Leak testing of sealed sources
(D) 39.37 - Physical inventory
(E) 39.39 - Records of material use
(F) 39.41 - Design and performance criteria for sealed sources
(G) 39.43 - Inspection, maintenance and opening of source or source holder
(H) 39.45 - Subsurface tracer studies
(I) 39.47 - Radioactive markers
(J) 39.49 - Uranium sinker bars
(K) 39.51 - Use of a sealed source in a well without surface casing
(L) 39.53 - Energy compensation source
(M) 39.55 - Tritium neutron generator target source

(4) **Subpart D; Radiation safety requirements.**
(A) 39.61 - Training
(B) 39.63 - Operating and emergency procedures
(C) 39.65 - Personnel monitoring
(D) 39.67 - Radiation surveys
(E) 39.69 - Radioactive contamination control

(5) **Subpart E; Security, Records, Notifications.**
(A) 39.71 - Security
(B) 39.73 - Documents and records required at field stations
(C) 39.75 - Documents and records required at temporary job sites
(D) 39.77 - Notification of incidents and lost sources; abandonment procedures for irretrievable

(b) **Exceptions.** The provisions to apply for exemption from the requirements of this Part contained in § 39.91 are not incorporated by reference. Applications for exemption should be addressed to DEQ as authorized in 252:410-1-3.

252:410-10-39.1. Additional requirements

In addition to the requirement of 10 CFR 39.73(a) for documents and records required at field stations, which is incorporated by reference, licensees shall also maintain copies of this Part 39 and Subchapters 20 and 23 of this Chapter.

PART 70. SPECIAL NUCLEAR MATERIAL: LICENSING

252:410-10-70. 10 CFR 70 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 70, Domestic Licensing of Special Nuclear Material:

(1) **General provisions.**
(A) 70.1 - Purpose, except (c),(d) and (e)
(B) 70.2 - Scope
(C) 70.3 - License requirements
(D) 70.4 - Definitions
(E) 70.7 - Employee protection
(F) 70.9 - Completeness and accuracy of information
(G) 70.10 - Deliberate misconduct

(2) **Exemptions.**
(A) 70.11 - Persons using special nuclear material under certain Department of Energy and Nuclear Regulatory Commission contracts
(B) 70.12 - Carriers
(C) ~~70.14~~ 70.17 - Specific exemptions

(3) **General licenses.**
(A) 70.18 - Types of licenses
(B) 70.19 - General license for calibration or reference sources
(C) 70.20 - General license to own special nuclear material

(4) **License applications.**
(A) 70.22 (a), (d) and (e) - Contents of applications
(B) 70.23 (a)(1) through (5) - Requirements for the approval of applications

(C) 70.25 - Financial assurance and recordkeeping for decommissioning.
(D) 70.31 (a) and (d) - Issuance of licenses
(E) 70.32 (a)(2), (a)(3),(a)(8), (a)(9), (b)(2) and (b)(5) - Conditions of licenses
(F) 70.33 - Renewal of licenses
(G) 70.34 - Amendment of licenses
(H) 70.35 - Commission action on applications to renew or amend
(I) 70.36 - Inalienability of licenses
(J) 70.38 - Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.
(K) 70.39 - Specific licenses for the manufacture or initial transfer of calibration or reference sources.

(5) **Acquisition, use and transfer of special nuclear material; Creditor's rights.**
(A) 70.41 - Authorized use of special nuclear material
(B) 70.42 - Transfer of special nuclear material, except (b)(6)

(6) **Special nuclear material control, records, reports.**
(A) 70.50 (a), (b) and (c)(1) and (2) - Reporting requirements.
(B) 70.51 (a) and (b) - Material balance, inventory, and records requirements
(C) 70.55 (a) and (b) - Inspections
(D) 70.56 (a) and (b) - Tests

(7) **Modification and revocation of licenses.** ~~70.61~~ 70.81 - Modification and revocation of licenses

PART 71. PACKAGING AND TRANSPORTING RADIOACTIVE MATERIAL

252:410-10-71. 10 CFR 71 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 71, Packaging and Transportation of Radioactive Material:

(1) **General provisions.**
(A) 71.0 - Purpose and scope
(B) 71.1(b) - Records
(C) 71.3 - Requirement for license
(D) 71.4 - Definitions
(E) 71.5 - Transportation of licensed material

(2) ~~Subpart B;~~ **Exemptions.**
(A) 71.7 - Completeness/accuracy of information
(B) 71.8 - Specific exemptions
(C) 71.9 - Exemptions of physicians
(D) 71.10 - Exemption for low-level materials

(3) ~~Subpart C;~~ **General licenses.**
(A) 71.12 - General license: NRC-approved package
(B) 71.13 - Previously approved package, except (c) and (d)
(C) 71.14 - General license: DOT specification container
(D) 71.16 - General license: Use of foreign approved package

(4) ~~Subpart G;~~ **Operating controls and procedures.**
(A) 71.81 - Applicability of operating controls and procedures
(B) 71.85 - Preliminary determinations
(C) 71.87 - Routine determinations
(D) 71.88 - Air transport of plutonium
(E) 71.89 - Opening instructions
(F) 71.91 - Records
(G) 71.93 - Inspection and tests
(H) 71.95 - Reports
(I) 71.97 - Advance notice of shipment of irradiated reactor fuel and nuclear waste

(5) ~~Subpart H;~~ **Quality assurance.**
(A) 71.101 - Quality assurance requirements
(B) 71.103 - Quality assurance organization
(C) 71.105 - Quality assurance program
(D) 71.107 - Package design control
(E) 71.109 - Procurement document control
(F) 71.111 - Instructions, procedures and drawings
(G) 71.113 - Document control
(H) 71.115 - Control of purchased material, equipment and services
(I) 71.117 - Identification and control of materials, parts and components
(J) 71.119 - Control of special processes
(K) 71.121 - Internal inspection
(L) 71.123 - Test control
(M) 71.125 - Control of measuring and test equipment
(N) 71.127 - Handling, storage and shipping control
(O) 71.129 - Inspection, test and operating status
(P) 71.131 - Nonconforming materials, parts or components
(Q) 71.133 - Corrective action
(R) 71.135 - Quality assurance records
(S) 71.137 - Audits

(6)Appendix A to Part 71--Determination of A_1 and A_2.

PART 101. ~~STATE AGREEMENT~~ RADIOACTIVE MATERIALS PROGRAM FEES

252:410-10-101. Fee schedules.

~~State Agreement~~ Radioactive Materials Program ~~fee schedules~~ annual fees and license application fees are set forth in this part. Categories of Radioactive Materials Program licenses set forth in this Part, but not the amount of the fees, are the same as categories of materials licenses set forth by NRC in a schedule following 10 CFR §171.16. The NRC schedule number for each license category is noted in brackets.

252:410-10-102. ~~State Agreement application and annual fees~~ Fees for special nuclear material licensing

(a) ~~**Category 1.**~~**Industrial measuring systems~~ – $870.00~~.** Licenses to possess and use special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. ~~[10 CFR 171.16(d)(1)(C).]:~~ License application fee and annual fee - $1,100.00.[1.C.].

(b) ~~**Category 2.**~~**Other - $2,000.00.** All other special nuclear material licenses. ~~[10 CFR 171.16(d)(1)(D).]:~~ License application fee and annual fee - $2,500.00.[1.D.].

252:410-10-103. ~~State Agreement application and annual fees~~ Fees for source material licensing

(a) ~~**Category 1.**~~**Shielding~~ – $330.00~~.** Licenses to possess, use and/or install source material for shielding~~. [10 CFR 171.16(d)(2)(B).]~~: License application fee and annual fee - $420.00. [2.B.].

(b) ~~**Category 2.**~~**Other~~ – $5,800.00~~.** Other source material licenses~~. [10 CFR 171.16(d)(2)(C).]~~: License application fee and annual fee - $7,250.00. [2.C.].

252:410-10-104. ~~State Agreement application and annual fees~~ Fees for byproduct material licensing

(a) ~~**Categories 1 and 2.**~~**Processing and manufacturing.** Licenses to possess and use byproduct material for processing or manufacturing of items containing byproduct material for commercial distribution:

~~(1) **Category 1.** 10 CFR 30 and 33 broad scope licenses: **$11,100.00.** [10 CFR 171.16(d)(3)(A).]~~

~~(2) **Category 2.** Other 10 CFR 30 byproduct licenses: **$3,800.00.** [10 CFR 171.16(d)(3)(B).]~~

(1) **Broad scope.** Broad scope licenses issued under 252:410-10-30 and 252:410-10-33: License application fee and annual fee - $13,875.00. [3.A.].

(2) **Other.** Other licenses issued under 252:410-10-30 for processing or manufacturing of items containing byproduct material for commercial distribution: License application fee and annual fee - $4,750.00. [3.B.].

(b) ~~**Categories 3 and 4**~~ **Medical Product Distribution.** Licenses ~~set out in 10 CFR 32.71, 32.72 or 32.74~~ issued under 252:410-10-32(3)(E), (F) and (G) authorizing, ~~with regard to~~ the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:

(1) ~~**Category 3 – $7,500.00**~~ **Combined.** Processing or manufacturing and distribution or redistribution~~. [10 CFR 171.16(d)(3)(C).]~~, including possession and use of source material for shielding authorized under 252:410-10-40 on the same license: License application fee and annual fee - $9,375.00. [3.C.].

(2) ~~**Category 4 – $3,000.00**~~ **Distribution only.** Distribution or redistribution not involving processing or manufacturing of the byproduct material~~. [10 CFR 171.16(d)(3)(D).] [Includes~~, including possession and use of source material for shielding authorized under ~~10 CFR 40~~ 252:410-10-40 when included on the same license: License application fee and annual fee - $3,750.00.] [3.D.].

(c) ~~**Category 5.**~~**Irradiation (self-shielded units)~~ – $2,100.00~~.** Licenses to possess and use byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)~~ [10 CFR 171.16(d)(3)(E).]~~: License application fee and annual fee - $2,625.00. [3.E.].

(d) ~~**Category 6.**~~**Irradiation ~~– $2,600.00~~ (small non self-shielded units).** Licenses to possess and use less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes~~. [10 CFR 171.16(d)(3)(F).] [Includes~~, including underwater irradiators for irradiation of material in which the source is not exposed for irradiation purposes: License application fee and annual fee - $3,250.00.~~]~~ [3.F.].

(e) **Category 7.Irradiation ~~– 13,100.00~~ (large non self-shielded units).** Licenses to possess and use 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes~~. [10 CFR 171.16(d)(3)(G).] [Includes~~ including underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes: License application fee and annual fee - $16,250.00.~~]~~ [3.G.].

(f) ~~**Category 8.**~~**Distribution to exempt persons (reviewable items)~~ – $3,400.00~~.** ~~10 CFR 32, Subpart A, licenses~~ Licenses issued under 252:410-10-32.(2) to distribute items containing byproduct material that require review to persons exempt from ~~10 CFR 30~~ 252:410-10-30 licensing requirements~~. [10 CFR 171.16(d)(3)(H).] [Excludes~~, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from ~~10 CFR 30~~ 252:410-10-30 licensing requirements: License application fee and annual fee - $3,700.00.~~]~~ [3.H.].

(g) ~~**Category 9.**~~**Distribution to exempt persons (non-reviewable items)~~ – $6,000.00~~.** ~~10 CFR 32, Subpart A, licenses~~ Licenses issued under 252:410-10-32(2) to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from ~~10 CFR 30~~ 252:410-10-30 licensing requirements~~. [10 CFR 171.16(d)(3)(I).] [Excludes~~, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from ~~10 CFR 30~~ 252:410-10-30 licensing requirements: License application fee and annual fee - $5,900.00.~~]~~ [3.I.].

(h) ~~**Category 10.**~~**Distribution to general licensees (reviewable items)~~ – $2,600.00~~.** ~~10 CFR 32, Subpart B, licenses~~ Licenses issued under 252:410-32(3) to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under ~~10 CFR 31. [10 CFR 171.16(d)(3)(J).] [Excludes~~ 252:410-10-31, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under ~~10 CFR 31~~ 252:410-10-31: License application fee and annual fee - $2,625.00.~~]~~ [3.J.].

(i) ~~**Category 11.**~~**Distribution to general licensees (non-reviewable items)~~ – $2,100.00~~.** ~~10 CFR 31, Subpart B, licenses~~

Licenses issued under 252:410-10-32(3) to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under ~~10 CFR 31. [10 CFR 171.16(d)(3)(K).] [Excludes~~ 252:410-10-31, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under ~~10 CFR 31~~ 252:410-10-31: License application fee and annual fee - $1,725.00.~~]~~ [3.K.].

(j) ~~**Category 12.**~~**Research and development (broad scope licenses)** ~~**- $8,200.00**~~. ~~10 CFR 30 and 33 broad scope licenses~~ Broad scope licenses issued under 252:410-10-30 and 252:410-10-33 to possess and use byproduct material for research and development that do not authorize commercial distribution ~~[10 CFR 171.16(d)(3)(L).]~~ : License application fee and annual fee - $10,250.00. [3.L.].

(k) ~~**Category 13.**~~**Research and development (licenses other than broad scope)** ~~**- $3,700.00**~~. ~~Other 10 CFR 30 licenses~~ Licenses, other than broad scope licenses, issued under 252:410-10-30 to possess and use byproduct material for research and development that do not authorize commercial distribution ~~[10 CFR 171.16(d)(3)(M).]~~: License application fee and annual fee - $4,625.00. [3.M.].

(l) ~~**Category 14.**~~**Service providers** ~~**- $4,100.00**~~. Licenses authorizing services for other licensees~~. [10 CFR 171.16(d)(3)(N).] [Excludes~~ , except licenses that authorize only ~~1)~~ calibration and/or leak testing services which are subject to ~~Category 16 of this Part~~ the fees specified in subsection (n) of this section, and ~~(2)~~ waste disposal services which are subject to the fees specified in 252:410-10-105: License application fee and annual fee - $5,125.00. ~~]~~ [3.N.].

(m) ~~**Category 15.**~~**Industrial radiography** ~~**- $9,400.00**~~. Licenses issued under 252:410-10-34 to possess and use byproduct material for industrial radiography operations~~. [10 CFR 171.16(d)(3)(O).] [Includes~~ , including possession and use of source material for shielding authorized under ~~10 CFR 40~~ 252:410-10-40 when authorized on the same license: License application fee and annual fee - $11,750.00.~~]~~ [3.O.].

(n) ~~**Category 16.**~~**Miscellaneous** ~~**- $1,100.00**~~ **including gauges and measuring devices.** All other specific byproduct material licenses ~~except those~~ or which no fees are identified in ~~252:410-10-105~~ 252:410-10-104 through 110~~. [10 CFR 171.16(d)(3)(P).]~~: License application fee and annual fee - $1,375.00. [3.P.].

252:410-10-105. ~~State agreement fees~~ Fees for waste disposal and processing

(a) ~~**Category 1.**~~**Waste storage, processing and disposal** ~~**- Annual fee: $68,300.00; License application and amendment fee: full cost**~~. Licenses specifically authorizing~~:~~

~~(1)~~ ~~The~~ the receipt of waste byproduct, source or special nuclear material from others for the purpose of:

~~(A)~~ ~~Contingency~~ contingency storage or commercial land disposal by the licensee~~;~~ or

~~(B)~~ ~~Commercial~~ licenses for receipt of waste from other persons for incineration or other treatment~~, and~~

~~(2)~~ ~~The~~ including the packaging of resulting waste and residues and the transfer of the packages by the licensee to another authorized to receive or dispose of waste material~~. [10 CFR 171.16(d)(4)(A).]~~ : License application fee, license renewal fee, and license amendment fee at full cost; annual fee - There are no existing Radioactive Materials Program licenses for this category. When DEQ issues a license for this category, an annual fee will be established for the category. [4.A.].

(b) ~~**Category 2.**~~**Packaging for transfer and disposal** ~~**- application and annual fee: $9,700.00**~~. Licenses specifically authorizing the receipt of waste byproduct, source or special nuclear material from others for the purpose of packaging or repackaging the waste material and transferring it to another authorized to receive or dispose of the material~~. [10 CFR 171.16(d)(4)(B).]~~ : License application fee and annual fee - $10,660.00. [4.B.].

(c) ~~**Category 3.**~~**Prepackaged waste transfer** ~~**- Application and annual fee: $5,200.00**~~. Licenses specifically authorizing the receipt of prepackaged waste byproduct, source or special nuclear material from others and the transfer of it to another authorized to receive or dispose of the waste material~~. [10 CFR 171.16(d)(4)(C).]~~ : License application fee and annual fee - $6,500.00. [4.C.].

252:410-10-106. ~~State Agreement fees~~ Fees for well logging

(a) ~~**Category 1.**~~**Well logging, well surveys and non-field flooding tracer studies** ~~**- application and annual fee: $5,500.00**~~. Licenses to possess and use byproduct, source material or special nuclear material for well logging, well surveys and tracer studies other than field flooding tracer studies~~. [10 CFR 171.16(d)(5)(A).]~~ : License application fee and annual fee - $6,875.00. [5.A.].

(b) ~~**Category 2.**~~**Field flooding tracer studies** ~~**- annual fee - $8,800.00; License application, renewal and amendment fee: full cost.**~~ Licenses to possess and use byproduct material for field flooding tracer studies~~. [10 CFR 171.16(d)(5)(B).]~~ : License application fee, license renewal fee and license amendment fee at full cost; annual fee - $11,000.00. [5.B.].

252:410-10-107. ~~State Agreement fees~~ Fees for nuclear laundries ~~**- application and annual fee**~~

~~$9,900.00 -~~ Licenses to commercially collect and launder items contaminated with byproduct, source or special nuclear material ~~[10 CFR 171.16(d)(6)(A).]~~ : License application fee and annual fee - $10,250.00. [6.A.].

252:410-10-108. ~~State Agreement application and annual fees~~ Fees for human use of byproduct, source or special material licensing

(a) ~~**Category 1.**~~**Teletherapy** ~~**- $6,900.00**~~. ~~10 CFR 30, 35, 40 and 70 licenses~~ Licenses issued under 252:410-10 parts 30, 35, 40 or 70 for human use of byproduct, source or special nuclear material in sealed sources contained in teletherapy devices~~. [10 CFR 171.16(d)(7)(A).] [Includes~~ , including possession and use of source material for shielding when authorized on the same license: License application fee and annual fee - $8,625.00. ~~]~~[7.A.].

(b) ~~**Category 2.**~~**Medical research/development (broad scope)** ~~**$15,800.00**~~. ~~10 CFR 30, 33, 35, 40 and 70 broad scope licenses for~~ Broad scope licenses issued under 252:410-10 parts 30, 33, 35, 40 or 70 to medical institutions or two or more physicians and authorizing research and development, including human use of byproduct material~~. [10 CFR 171.16(d)(7)(B).] [Excludes~~ , except licenses for byproduct, source or special nuclear material in sealed sources contained in teletherapy devices.~~] [Includes~~ This fee category also includes the possession and use of source material for shielding when authorized on the same license: License application fee and annual fee - $19,750.00.~~]~~ [7.B.].

(c) ~~**Category 3.**~~**Other** ~~**$3,200.00**~~. Other ~~10 CFR 30, 35, 40 and 70 licenses~~ licenses issued under 252:410-10-parts 30, 35, 40 and 70 for human use of byproduct, source or special nuclear material~~. [10 CFR 171.16(d)(7)(C).] [Excludes~~ , except licenses for byproduct, source or special nuclear material in sealed sources contained in teletherapy devices.~~] [Includes~~ This fee category includes possession and use of source material for shielding when authorized on the same license - License application fee and annual fee - $4,000.00.~~]~~ [7.C.].

252:410-10-109. ~~**State Agreement fees**~~ **Fees for civil defense activities** ~~**– application and annual fee**~~

~~$1,200.00 –~~ Licenses to possess and use byproduct, source or special nuclear material for civil defense activities~~. [10 CFR 171.16(d)(8)(A).]~~ - License application fee and annual fee - $1,500.00. [8.A.].

252:410-10-110. ~~**State Agreement fees**~~ **Fees for decommissioning, decontamination, reclamation or site restoration activities** ~~**– application, renewal and amendment fees**~~

~~Full cost –~~ Byproduct, source or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities~~. [10 CFR 171.16(d)(14).]~~ - License application fee, license renewal fee and license amendment fee - at full cost. [14.].

252:410-10-111. ~~**Small/very small entity size standards and fee schedule**~~ **Fees for small entities**

~~Licenses are subject to fee exemptions of 252:410-10-116.~~ Licenses issued to any of the following small entities are subject to the lower fees set forth below. To be eligible for the lower fees, an individual empowered to act on behalf of an applicant for a new or renewed radioactive materials license must certify annually that the applicant meets the following qualifications.

(1) **Small business.** A for-profit concern that provides a service, or a concern not engaged in manufacturing with annual gross receipts for the previous fiscal year ~~of $5 million or less~~ within the ranges set forth below, averaged over its last 3 completed fiscal years.

(A) $350,000 to $5,000,000: Annual fee - ~~$1,200~~ $1,500.00.

(B) Less than $350,000: Annual fee - ~~$270~~ $350.00.

(2) **Manufacturing industry.** A manufacturing concern with an average number of ~~500 or fewer~~ employees within the ranges set forth below, based upon employment during each pay period for the preceding 12 calendar months.

(A) 35 to 500 employees: Annual fee - ~~$1,200~~ $1,500.00.

(B) Less than 35 employees: Annual fee - ~~$270~~ $350.00.

(3) **Small organization.** A not-for-profit organization that is independently owned and operated and has annual gross receipts ~~of $5 million or less~~ within the ranges set forth below.

(A) $350,000 to $5,000,000: Annual fee - ~~$1,200~~ $1,500.00.

(B) Less than $350,000: Annual fee - ~~$270~~ $350.00.

(4) **Small governmental jurisdiction.** (Includes publicly supported educational institutions.) A government of a city, county, town, township, village, school district, or special district with a population ~~of less than 50,000~~ within the following ranges.

(A) 20,000 to 50,000 population: Annual fee - ~~$1,200~~ $1,500.00.

(B) Less than 20,000 population: Annual fee - ~~$270~~ $350.00.

(5) **Small educational institution.** An education institution that is not state or publicly supported and ~~has 500 or fewer employees~~ employment within the following ranges.

(A) 35 to 500 employees: Annual fee - ~~$1,200~~ $1,500.00.

(B) Less than 35 employees: Annual fee - ~~$270~~ $350.00.

252:410-10-114. Full cost fees

Fees specified at "full cost" are based on costs calculated at ~~$80.00~~ $100.00 per hour for DEQ staff time and actual costs of any contractual services.

252:410-10-116. Small and very small entity fees [AMENDED AND RENUMBERED TO 252:410-10-111]

~~Different fee rates are available for small businesses, manufacturing entities and governmental jurisdictions. [See 252:410-10-111.] To be eligible an individual empowered to act on behalf of an applicant for a new or renewed State Agreement license must certify that the applicant qualifies as a small or very small entity.~~

252:410-10-117. Amendment fees

~~(a)~~ ~~**Category changes.**~~ The fee to change to a category having a higher fee is the difference between the current category fee and the higher fee prorated by the number of months remaining until the license anniversary date.

~~(b) **Full cost assessments.** [See 252:410-10-114.]~~

252:410-10-118. Reciprocity fees

~~The~~ Applicants for reciprocity ~~fees for the various license categories are as follows~~ shall pay an annual fee as follows:

(1) ~~The~~ For applications received three or more days before the work is to be performed, the higher of ~~$2000~~ $2,500.00 or full cost up to the applicable annual fee, and for applications received less than three days before the work is to be performed, the higher of $3,500.00 or full cost, but not to exceed the applicable ~~license~~ annual fee for the category following license categories:

(A) 252:410-10-104~~, Categories 7 and 14;~~ (e),(l) and (m)

(B) 252:410-10-105~~, Categories 1, 2 and 3;~~

(C) 252:410-10-106~~, Category 2;~~ (b)

(D) 252:410-10-107;

(E) 252:410-10-110.

(2) ~~$1,200.00~~ For applications received three or more days before the work is to be performed, $1,500.00, and for applications received less than three days before the work is to be performed, $2,500.00, for each license category not listed in paragraph (1) of this section.

252:410-10-119. Fee exemptions

~~Subsections (a) and (b) of~~ The fee exemptions set forth in 10 CFR 170.11(a) and (b) are hereby incorporated by reference.

252:410-10-120. Effective date [REVOKED]

~~The incorporations and fee schedules of this Subchapter shall become effective on the date specified in the Agreement between the NRC and the State of Oklahoma providing for the discontinuance of the regulatory authority of the NRC and assumption of the program by DEQ.~~

PART 150. EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274 OF THE FEDERAL ATOMIC ENERGY ACT

252:410-10-150. 10 CFR 150 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 150, Exemptions and continued regulatory authority in agreement states and in offshore waters under Section 274 of the federal Atomic Energy Act:

(1) **General Provisions.** ~~10 CFR~~ 150.3~~(b),(c),(f),(g),(i),(j);~~ - Definitions, except the terms *Act*, *Commission*, *Government agency*, *Production facility*, *State*, *Utilization facility*, and *Uranium enrichment facility*.

(2) **Exemptions in Agreement States.** ~~10 CFR~~ 150.11 - Critical Mass~~; and~~

(3) **Reciprocity.** ~~10 CFR~~ 150.20(a)-(b) - Recognition of Agreement State licenses.

[OAR Docket #04-828; filed 5-3-04]

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

[OAR Docket #04-829]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Industrial X-ray Radiography
252:410-15-1 [AMENDED]
252:410-15-2 [AMENDED]
252:410-15-4 [AMENDED]
252:410-15-8 [NEW]
252:410-15-9 [NEW]
252:410-15-10 [NEW]
AUTHORITY:
Environmental Quality Board and Radiation Management Advisory Council powers and duties; 27A O.S., §§ 2-2-101, 2-2-201, and 2-9-104
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The Department is proposing amendments to Subchapter 15, including new requirements for utilization logs, personnel monitoring, and notification to DEQ for incidents involving x-ray machines used for industrial radiography. These changes would strengthen the requirements and align the requirements for industrial radiographers using x-ray machines more closely with those in effect in other states and with those in effect for industrial radiographers using sealed sources.
CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality , P. O. Box 1677, Oklahoma City, OK 73101-1677, (405) 702-5100.

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 11, 2004:

SUBCHAPTER 15. INDUSTRIAL X-RAY RADIOGRAPHY

252:410-15-1. Scope and applicability

(a) **Scope.** This Subchapter pertains to x-ray systems used for industrial radiography.

(b) **Applicability.** The requirements of this Subchapter apply to any person who possesses an industrial x-ray radiography system and causes radiation to be produced through the operation or testing of the machine in the state.

(c) **Authorization required.** No persons subject to this Subchapter may perform any radiation management activity with an industrial radiography system unless:

(1) they hold a DEQ-issued radiation machine operating permit and have registered the system with DEQ in accordance with Subchapters 3 and 7; and

(2) the industrial radiography system and management of radiation safety meet the applicable requirements of this Chapter.

(d) **Related requirements.** Persons subject to this Subchapter are also subject to the general requirements of Subchapter 1, the permitting and registration requirements of Subchapters 3 and 7, Part 1 of Subchapter 13 and the standards for protection against radiation in Subchapter 20.

(e) **Industrial radiography operators.** DEQ certification in industrial x-ray radiography is available to individual industrial radiographers on a voluntary basis according to Subchapter 5.

~~(f) **Personnel Monitoring.** Each permittee or licensee shall supply appropriate personnel monitoring equipment to, and shall require the use of such equipment by each individual who uses or operates any source of radiation.~~

252:410-15-2. Controls and security

(a) **Area controls.** Permanent x-ray industrial radiographic installations shall have high radiation area entrance controls as described in 10 CFR 34.33.

(b) **Temporary job sites.** At temporary ~~work~~ job sites, a radiographer must maintain surveillance over the radiation area during each operation to ensure no one enters the area when radiation is being produced.

(1) **Barriers.** ~~In addition to posting temporary work sites, ropes~~ Ropes and/or barriers should be used when practical to help prevent entry. During pipeline industrial radiographic operations radiation signs and barriers ~~sufficient~~ must be positioned in a manner to prevent individuals from entering the area when radiation is being produced ~~must be posted~~.

(~~b~~2) **Posting of radiation areas.** Before beginning an industrial radiography operation at a temporary ~~work~~ job site, a permittee must identify and post the radiation areas and high radiation areas, or designate ~~just one~~ a single restricted area based on the exposure limits established in 10 CFR 20.1301 for members of the public. If only ~~one~~ a single area is designated, both signs must be posted at ~~its~~ the area boundary.

(c) **System security.** The control panel of each system shall be equipped with a locking device that prevents unauthorized use of the system or accidental production of radiation. This control panel must be kept locked and the key stored in a separate secure location except when a radiographer or assistant radiographer has the system under direct visual surveillance.

(d) **Labeling.** X-ray tube housings and control boxes must be labeled according to 252:410-13-2(a).

252:410-15-4. Surveys

(a) **Verification survey.** After each industrial radiography exposure at either a temporary work site or a permanent x-ray radiographic installation, a physical radiation survey must be made to verify that each radiation machine has been turned off.

(b) **Temporary ~~work~~ job sites.** In addition to verification survey, an area survey must also be made at each temporary ~~work~~ job site, to ensure radiation areas have been accurately posted. The results must be recorded according to 252:410-20-2 and include the kV and mA settings used during the survey.

(c) **Permanent installations.** Surveys required for permanent installations are also subject to the requirements of 252:410-13-3(b).

252:410-15-8. Utilization logs

(a) Each permittee shall maintain utilization logs showing for each industrial radiography machine the following information:

(1) A description, including the make, model, and serial number of the radiation machine or transport or storage container in which the tube is located;

(2) The identity and signature of the radiographer to whom assigned; and

(3) The location where used and dates of use, including the dates removed and returned to storage.

(b) Utilization logs are records which shall be maintained as required by 252:410-1-4 and 252:410-3-33.

252:410-15-9. Personnel monitoring

(a) **Monitoring devices.** The permittee shall not allow any individual to perform radiographic operations unless, at all times during radiographic operations, each individual wears on the trunk of the body:

(1) an individual badge, such as a film badge, optically stimulated luminescent device (OSL) or thermoluminescent dosimeter (TLD), which must be assigned to and worn only by one individual;

(2) a direct reading dosimeter (such as a pocket dosimeter)or electronic dosimeter; and

(3) an alarm ratemeter.

(b) **Daily maintenance of monitoring devices.** Direct reading and electronic dosimeters shall be read and the exposures recorded at the beginning and end of each shift or change of job location.

(1) At a minimum, direct reading dosimeters shall be recharged and electronic dosimeters reset, and "start" readings recorded immediately before checking out any source of radiation from an authorized storage location for the purposes of conducting industrial radiographic operations, and before beginning radiographic operations on any subsequent calendar day (if the source of radiation has not been checked back into an authorized storage site).

(2) Whenever radiographic operations are concluded for the day, the "end" readings on direct reading and electronic dosimeters shall be recorded and the accumulated occupational doses for that day determined and recorded.

(c) **Periodic maintenance of monitoring devices.**

(1) Film badges shall be replaced at least monthly. Other individual badges shall be replaced at periods not to exceed three months.

(2) All individual badges shall be processed and evaluated by a processor accredited by the National Voluntary Laboratory Accreditation Program (NVLAP).

(3) After replacement, each individual badge shall be submitted for processing as soon as practicable.

(4) Direct reading and electronic dosimeters shall be checked at periods not to exceed 12 months for correct response to radiation, and records of such checks shall be maintained. Acceptable range is within plus or minus 20 percent of the true radiation exposure.

(5) At any time a direct reading dosimeter is discharged beyond its range, or reads greater than 200 mrem (2mSv), and the possibility of radiation exposure can not be ruled out as the cause, industrial radiographic operations by that worker shall cease and the worker's individual badge shall be processed immediately. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made by the RSO or the RSO's designee. The results of this determination shall be included in records maintained by the facility.

(d) **Lost or damaged monitoring device.** If a worker's individual badge, direct reading or electronic dosimeter is lost or damaged, the worker shall cease work immediately until a replacement monitoring device meeting the requirements of this section is provided. If the worker's individual badge is lost or damaged, the exposure shall be calculated for the time period from issuance to loss or damage of the individual badge. The results of the calculated exposure and the time period for which the individual badge was lost or damaged shall be included and maintained in the facility's records.

(e) **Exception.** At permanent x-ray radiographic installations where other appropriate alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required.

(f) **Alarm ratemeters.** Each alarm ratemeter must:

(1) Be checked to ensure that the alarm functions properly (sounds) before using at the start of each shift;

(2) Be set to give an alarm signal at a preset dose rate of 5 mSv/hr (500 mrem/hr, with an accuracy of plus or minus 20 percent of the true radiation dose rate;

(3) Require special means to change the preset alarm; and

(4) Be calibrated at periods not to exceed 12 months for correct response to radiation.

(g) **Records of personnel monitoring.** The licensee shall maintain exposure records for the time periods specified:

(1) Direct reading dosimeter readings, as required by 252:410-15-9(b), shall be maintained for three (3) years after the record is made;

(2) Yearly operability checks, as required by 252:410-15-9(c)(4), shall be maintained for three (3) years after the record is made;

(3) Alarm ratemeter calibrations, as required by 252:410-15-9(f)(4), shall be maintained for three (3) years after the record is made;

(4) Personnel dosimeter results received from the accredited NVLAP processor, as required by 252:410-15-9(c)(2), shall be maintained until the DEQ terminates the license;

(5) Records of estimates of exposures as a result of off-scale personal direct reading dosimeters, as required by 252:410-15-9(c)(5), shall be maintained until the DEQ terminates the license;

(6) Records of lost or damaged personnel dosimeters, as required by 252:410-15-9(d), shall be maintained until the DEQ terminates the license.

252:410-15-10. Notifications

In addition to the reporting requirements listed in OAC 252:410-1-4(a)(4) and specified in OAC 252:410-20-7, each permittee shall provide a written report to the DEQ within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

(1) Failure of any component, which is critical to safe operation of the device, to properly perform its intended function; or

(2) An indicator on a radiation machine fails to show that radiation is being produced, an exposure switch fails to terminate production of radiation when turned to the off position, or a safety interlock fails to terminate x-ray production.

[OAR Docket #04-829; filed 5-3-04]

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

[OAR Docket #04-830]

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PERMANENT final adoption

RULES:

Subchapter 20. Standards for Protection Against Radiation
252:410-20-7 [NEW]

AUTHORITY:

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

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None
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Incorporated standards:
The following portions of Title 10, Code of Federal Regulations, Part 20, Standards for Protection Against Radiation, are incorporated by reference in their entirety as they existed on January 1, 2001:
20.1201
20.1207
20.1208
20.1301
Incorporating rules:
252:410-20-7
Availability:
From the contact person
ANALYSIS:
The proposed rulemaking is an amendment to Subchapter 20 that adds requirements directed to persons holding permits authorizing the possession and use of radiation machines. These additional requirements are related to the reporting of the theft or loss of a machine, the notification of incidents, and the reporting of human exposure to the machine-produced radiation when such exposure exceeds certain limits.
CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, P. O. Box 1677, Oklahoma City, OK 73101-1677, (405) 702-5100.

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 11, 2004:

SUBCHAPTER 20. STANDARDS FOR PROTECTION AGAINST RADIATION

252:410-20-7. Reports

(a) **Reports of theft or loss of radiation machines.**

(1) **Telephone report.** Each permittee shall report by telephone as follows:

(A) Immediately after its occurrence becomes known to the permittee, any lost, stolen, or missing radiation machine(s) under such circumstances that it appears to the permittee that an exposure could result to persons in unrestricted areas.

(B) All reports should be made to a member of the Radiation Management staff at 405-702-5100 business days between the hours of 8:00 am to 4:30 pm., and at all other times to the DEQ Hotline, 1-800-522-0206.

(2) **Written report.** Each permittee required to report under paragraph (1) of this section shall, within 30 days after making the telephone report, file a written report with DEQ setting forth the following information:

(A) A description of the radiation machine(s) involved including the manufacturer, model number, serial number, maximum design kilovoltage and the maximum design milliamperage;

(B) A description of the circumstances under which the loss or theft occurred;

(C) A statement of the disposition, or probable disposition of the radiation machine involved;

(D) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible doses to persons in unrestricted areas;

(E) Actions that have been taken, or will be taken, to recover the radiation machine(s); and

(F) Procedure or measures that have been, or will be, adopted to ensure against recurrence of loss or theft of radiation machine(s).

(3) **Updates.** When additional information is received subsequent to filing the written report, the permittee shall also provide written notice to DEQ about the loss or theft within 30 days after the permittee learns of such information.

(b) **Notification of incidents.**

(1) **Immediate notification.** Notwithstanding any other requirements for notification, each permittee shall immediately upon discovery report to DEQ, any event involving radiation machines that may have caused or threatens to cause an individual to receive:

(A) A whole body dose of 25 rems (0.25 Sv) or more; or

(B) A lens dose of 75 rems (0.75 Sv) or more; or

(C) A shallow dose to the skin or extremities of 250 rads or more.

(2) **Twenty-four hour notification.** Each permittee shall, within 24 hours of discovery of the event, report any event involving a radiation machine that may have caused, or threatens to cause, a person to receive in a period of 24 hours:

(A) a dose exceeding 5 rems, (0.05 Sv); or

(B) a lens dose exceeding 15 rems (0.15 Sv); or

(C) a shallow dose to the skin or extremities exceeding 50 rems (0.5 Sv).

(c) **Reports of exposures from radiation machines exceeding the constraints or limits.**

(1) **Reportable events.** Each permittee shall submit a written report within 30 days after learning of any of the following occurrences:

(A) Any incident for which notification is required by OAC 252:410-20-7(b), or

(B) Doses in excess of any of the following:

(i) the occupational dose limits for adults in 10 CFR 20.1201;
(ii) the occupational dose limits for a minor in 10 CFR 20.1207;
(iii) the limits for an embryo/fetus of a declared pregnant woman in 10 CFR 20.1208;
(iv) the limits for an individual member of the public in 10 CFR 20.1301; or
(v) any applicable limit in the permit.

(2) **Contents of reports.** Each report required by paragraph (1) of this subsection must describe the extent of exposure of individuals to radiation including, as appropriate:
(A) estimates of each individual's dose;
(B) levels of radiation involved;
(C) cause of the elevated exposures and dose rates; and
(D) corrective steps taken or planned to ensure against a recurrence, including a schedule.

[OAR Docket #04-830; filed 5-3-04]

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

[OAR Docket #04-831]

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PERMANENT final adoption
RULES:
Subchapter 23. Notices, Instructions and Reports to Workers: Inspection and Investigations [NEW]
252:410-23-1 [NEW]
252:410-23-2 [NEW]
252:410-23-3 [NEW]
252:410-23-4 [AMENDED AND RENUMBERED FROM 252:410–10–19]
252:410-23-5 [NEW]
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Incorporated standards:
The following portions of Title 10, Code of Federal Regulations, are incorporated by reference in their entirety as they existed on January 1, 2001:
19.1
19.11
19.12
19.13
19.14
19.15
19.16
19.17
Incorporating rules:
252:410-23-4 and 252:410-23-5
Availability:
From the contact person
ANALYSIS:
The proposed rulemaking is to establish a new Subchapter (Subchapter 23) with a new title while concurrently but separately deleting similar requirements (Part 19, Worker Communications of Subchapter 10). Although the regulatory content is the same, the proposed new Subchapter 23 is applied to a broad range of radiation programs rather than just the State Agreement Program, proposed to be renamed as the Radioactive Materials Program.
CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, P. O. Box 1677, Oklahoma City, OK 73101-1677, (405) 702-5100

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 11, 2004:

SUBCHAPTER 23. NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

252:410-23-1. Scope and applicability

The rules in this Subchapter establish requirements for all persons possessing source(s) of ionizing radiation subject to DEQ jurisdiction.

252:410-23-2. Interfacing terms

For purposes of this Subchapter, these 10 CFR terms shall be interpreted as follows unless specified otherwise in specific incorporating sections:
(1) **"Licensee"** means the holder of any DEQ radiation management authorization.
(2) **"Commission"** or **"The Nuclear Regulatory Commission"** or **"NRC"** means DEQ.
(3) **"Commissioner", "Regional Administrator", "Administrator", "Director"** or **"Executive Director"** means DEQ's Executive Director.

252:410-23-3. Alternate forms

In lieu of a referenced NRC form, persons reporting to DEQ may use their own computer-generated form or a State form available from DEQ.

252:410-23-4. Incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 19, Notices, Instructions and Reports to Workers: Inspection and Investigations:

(1) **General provisions.**

(A) 19.1 - Purpose.

(B) 19.3 - Definitions, except the terms "Exclusion", "License", and "Sequestration" are not incorporated by reference.

(2) **Licensee notice requirements.**

(A) 19.11 - Posting of notices to workers

(B) 19.12 - Instruction to workers

(C) 19.13 - Notifications and reports to individuals

(3) **Compliance inspections.**

(A) 19.14 - Presence of representatives of licensees and workers during inspections

(B) 19.15 - Consultation with workers during inspections

(C) 19.16 - Requests by workers for inspections

(D) 19.17 - Inspections not warranted; informal review

(4) **Compliance and procedures.** 19.31 - Application for exemptions.

252:410-23-5. Additional requirements

(a) **Posting notices.** In addition to the requirements of 10 CFR 19.11 for posting notices to workers, which is incorporated by reference, licensees shall post current copies of this Subchapter 23 and Subchapter 20 of this Chapter, or a notice of where these rules can be examined.

(b) **Enforcement.** DEQ compliance inspections, investigations and administrative enforcement, 27A O.S. § 2-3-501 *et seq.*, and OAC 252:4, Department of Environmental Quality Rules of Practice and Procedure, also apply.

[OAR Docket #04-831; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 605. DISCHARGE STANDARDS [REVOKED]

[OAR Docket #04-832]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
Chapter 605. Discharge Standards [REVOKED]
AUTHORITY:
Environmental Quality Board and Water Quality Management Advisory Council powers and duties, 27A O.S., §§ 2-2-101 and 2-2-201 and the Oklahoma Pollution Discharge Elimination System Act, 27A O.S., § 2-6-201 *et seq.*
DATES:
Comment period:
December 1, 2003 through January 13, 2004
Public hearing:
January 13, 2004 and February 27, 2004
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Submitted to Governor:
March 5, 2004
Submitted to House:
March 5, 2004
Submitted to Senate:
March 5, 2004
Gubernatorial approval:
April 16, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2004
Final adoption:
April 28, 2004
Effective:
June 11, 2004
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The purpose of the proposed revocation is to combine two existing rule chapters that both address parts of the NPDES/OPDES program into one chapter. This will aid in the understanding of the NPDES/OPDES program by the regulated community by placing all applicable requirements in one chapter. This change was originally suggested by municipalities.
CONTACT PERSON:
Shellie Chard-McClary, Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma City, OK 73102, mailing address: P.O. Box 1677, Oklahoma City, OK 73101, phone 405-702-8100, FAX 405-702-8101

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 11, 2004:

SUBCHAPTER 1. INTRODUCTION [REVOKED]

252:605-1-1. Purpose [REVOKED]

~~(a) **Intent.** This chapter sets the point source and stormwater permitting standards for discharges to the waters of the State of Oklahoma from those facilities within the jurisdiction of the Oklahoma Department of Environmental Quality as specified in Title 27A O.S. § 1-3-101. This Chapter implements the Oklahoma Pollutant Discharge Elimination System Act, which begins at Title 27A O.S. § 2-6-201 of the Oklahoma Statutes.~~

~~(b) **Other rules apply.** This Chapter applies in addition to other rules. This chapter governs the effluent discharged from municipal wastewater treatment systems (constructed under OAC 252:656) and industrial wastewater treatment systems (constructed under OAC 252:616). The discharges regulated by this Chapter must not cause a violation of the Oklahoma Water Quality Standards (OAC 785:45).~~

~~(c) **Excludes.** This Chapter does not govern discharges from marine toilets, as prohibited by Title 63 O.S. § 4213. Nor does this Chapter govern discharges of dredge and fill material under the jurisdiction of the United States Corps. of Engineers under Section 404 of the Federal Clean Water Act. Water in a treatment system is not water of the State of Oklahoma.~~

252:605-1-4. Definitions [REVOKED]

~~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:~~

~~**"Best professional judgment"** or **"BPJ"** means the technical opinion developed by a permit drafter after consideration of all reasonably available and pertinent data or information which forms the basis for the terms and conditions of a discharge permit, and the use of sound engineering analysis of the industry, the nature and quantity of potential pollutants which may be produced and of the proposed treatment plant.~~

~~**"Bypass"** means the intentional or unintentional diversion of waste streams from any portion of a treatment, disposal or collection facility.~~

~~**"Control tests"** means chemical, physical or bacteriological tests, including visual observations made by or under the supervision of an operator to control plant performance, determine the quality of plant effluent and determine stream conditions.~~

~~**"DEQ"** means the Oklahoma Department of Environmental Quality.~~

~~**"Discharge point"** means the point at which pollutants, wastewater or stormwater enters waters of the state or become waters of the state.~~

~~**"Impoundment"** or **"Surface impoundment"** shall have the same meaning used in OAC 252:616-1-2.~~

~~**"Laboratory checks"** means chemical, physical or bacteriological tests, including visual observations made on samples submitted by the operator or other authorized representatives to confirm the quality of the samples or to standardize plant control tests and procedures.~~

~~**"Operating records and reports"** means the daily record of data connected with the operation of the system compiled in a monthly report on forms approved by the DEQ.~~

252:605-1-5. Adoption of U.S. EPA regulations by reference [REVOKED]

~~(a) **Interpretation of rules.** Narrative provisions of this Chapter shall control over any provision of regulations of the Environmental Protection Agency which are adopted by reference. The rules set forth in this Chapter shall be given the interpretation which is consistent with state compliance with the requirements of 40 CFR Part 123 (EPA Regulations on State NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.~~

~~(b) **Federal regulations adopted.** The following provisions of Title 40 of the Code of Federal Regulations (CFR) and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety:~~

~~(1) Part 116 (Hazardous Substances List)~~

~~(2) Part 117 (Reportable Quantities for Hazardous Substances)~~

~~(3) The following from PART 122 (NPDES PERMIT REGULATIONS):~~

~~(A) 122.1 (b) [scope of NPDES permit requirements]~~

~~(B) 122.2 (definitions)~~

~~(C) 122.3 (exclusions)~~

~~(D) 122.4 (prohibitions)~~

~~(E) 122.5 (effect of permit)~~

~~(F) 122.6 (continuation of expiring permits)~~

~~(G) 122.7 (b) and (c) (confidential information)~~

~~(H) 122.21 (application for a permit)~~

~~(I) 122.22 (signatories)~~

~~(J) 122.24 (concentrated aquatic animal production facilities)~~

~~(K) 122.25 (aquaculture projects)~~

~~(L) 122.26 (stormwater discharges)~~

~~(M) 122.27 (silviculture)~~

~~(N) 122.28 (a) and (b) (general permits)~~

~~(O) 122.29 (new sources and new dischargers)~~

~~(P) 122.30 What are the objectives of the storm water regulations for small MS4s?~~

~~(Q) 122.31 As a tribe, what is my role under the NPDES storm water program?~~

~~(R) 122.32 As an operator of a small MS4, am I regulated under the NPDES storm water program?~~

~~(S) 122.33 If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?~~

~~(T) 122.34 As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?~~

~~(U) 122.35 As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?~~

~~(V) 122.36 As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?~~

~~(W) 122.41 (permit conditions)~~

~~(X) 122.42 (conditions for specified categories of permits)~~

~~(Y) 122.43 (establishing permit conditions)~~

~~(Z) 122.44 (establishing permit limitations, standards and other conditions)~~

~~(AA) 122.45 (calculating permit conditions)~~

~~(BB) 122.46 (permit duration)~~

~~(CC) 122.47 (a) (schedules of compliance)~~

~~(DD) 122.48 (monitoring requirements)]~~

~~(EE) 122.50 (disposal into wells)~~

~~(FF) 122.61 (permit transfer)~~

~~(GG) 122.62 (permit modification)~~

~~(HH) 122.63 (minor modifications of permits)~~

~~(II) 122.64 (permit termination)~~

~~(JJ) Appendices A through I~~

~~(4) The following from PART 124 (Procedures for Decision making):~~

~~(A) 124.1 (introduction)~~

~~(B) 124.2 (definitions)~~

~~(C) 124.3 (a), (c), and (d) (application for a permit)~~

~~(D) 124.5 (a),(c),(d) and (f) (modification of permits)~~

~~(E) 124.6 (a),(c),(d) and (e) (draft permit)~~

~~(F) 124.7 (statement of basis of conditions where no fact sheet is adopted)~~
~~(G) 124.8 (fact sheet)~~
~~(H) 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) (public notice)~~
~~(I) 124.11 (public comments and requests for hearings)~~
~~(J) 124.12 (a) and (c) (public hearings)~~
~~(K) 124.13 (obligation of protestors, etc., to raise all issues)~~
~~(L) 124.14 (reopening)~~
~~(M) 124.15 (issuance & effective dates of permits)~~
~~(N) 124.17 (a) and (c) (response to comments)~~
~~(O) 124.51 (a) and (b) (specific permitting procedures purpose and scope)~~
~~(P) 124.52 (permits required on a case by case basis)~~
~~(Q) 124.56 (fact sheets)~~
~~(R) 124.57 (a) (public notice)~~
~~(S) 124.59 (comments from government agencies)~~
~~(T) 124.62 (decision on variances)~~
~~(U) 124.66 (thermal variance procedures)~~

~~(5) The following from PART 125 (criteria and standards for NPDES):~~
~~(A) Subpart A (technology based treatment),~~
~~(B) B (criteria for aquaculture projects),~~
~~(C) (fundamentally different factors),~~
~~(D) (alternative effluent limitations),~~
~~(E) I (cooling water intakes), and~~

~~(6) 40 CFR Part 129 (Toxic Pollutant Effluent Standards)~~
~~(7) 40 CFR Part 136 (testing and laboratory)~~
~~(8) 40 CFR Sections 401-471 (Effluent Guidelines and Standards)~~
~~(9) 40 CFR Section 110.6 (notice of oil discharge) and~~
~~(10) 40 CFR Part 302 (Reportable Quantities and Notification).~~

~~(c) **Exclusions.** Provisions of 40 CFR relating to CAFES are excluded because they are beyond the jurisdiction of this Chapter.~~

252:605-1-9. Date of federal regulations incorporated [REVOKED]

~~When reference is made to 40 CFR it shall mean, unless otherwise specified, the volume of 40 CFR as published on July 1, 2001.~~

252:605-1-10. Terminology in incorporated federal regulations [REVOKED]

~~(a) As used in the incorporated federal regulations, unless the context clearly indicates otherwise:~~
~~(1) **"Administrator"**, **"Regional Administrator"** and **"State Director"** are synonymous with Executive Director of the DEQ;~~
~~(2) **"Clean Water Act"** and **"CWA"** are synonymous with the Oklahoma Pollutant Discharge Elimination System Act, Title 27A § 2-6-201 and following;~~
~~(3) **"State"** is synonymous with DEQ.~~
~~(4) **"Evidentiary hearing"** is synonymous with administrative hearing.~~
~~(5) **"Public hearing"** is synonymous with public meeting.~~

~~(b) Federal statutes and regulations that are cited in federal regulations incorporated by reference herein may be used as guidance.~~

252:605-1-11. NPDES Authorized Program [REVOKED]

~~On November 19, 1996, the DEQ was authorized by the EPA to administer the NPDES permit program in Oklahoma. Accordingly, federal NPDES permits and pending applications were transferred from the EPA to the DEQ for administration and enforcement. Such permits, applications and any analogous state permits may be revised to reflect the provisions of this Chapter.~~

252:605-1-12. Spill reporting [REVOKED]

~~(a) **Report.** The owner or operator of a facility or vessel shall cause to be reported to the DEQ any spill or discharge to the waters of the State on or from the facility or vessel according to 40 CFR Part 117. Reports to the DEQ may be telephoned to (800) 522-0206.~~
~~(b) **Response.** Whenever a spill or discharge occurs that is required by 40 CFR Part 117 and this rule to be reported to the DEQ, the owner or operator of the facility or vessel shall immediately act to stop, contain, clean-up and prevent recurrence of the spill or discharge.~~

SUBCHAPTER 3. PERMITS [REVOKED]

PART 5. PERMITTING PROCESS FOR REGULAR INDUSTRIAL DISCHARGE PERMITS [REVOKED]

252:605-3-46. Access and use [REVOKED]

~~An applicant shall acquire or possess a right to use and access the property on which discharge points, facilities, activities or discharge sources are located. The owner/operator shall maintain such rights for the duration of the permit term, and shall provide documentary proof to the DEQ.~~

252:605-3-47. Discharge to storm sewer [REVOKED]

~~Upon filing, any applicant proposing to discharge to a storm sewer shall provide one copy of the application to the municipality having jurisdiction over such storm sewer.~~

252:605-3-52. Draft permit [REVOKED]

~~(a) Appropriate reporting requirements, including a requirement that analyses reported for industrial discharges shall be performed by laboratories certified by the DEQ and that analyses reported for municipal discharges shall be performed by an operator certified by the DEQ, as specified in this Chapter.~~

~~(b) The DEQ may include in the draft permit statements of, or may incorporate by reference, any attachment to the permit which contains appropriate conditions, plans, limitations and other requirements relating to municipal lagoons, industrial surface impoundments, sludge management plans, or land application of sludge or wastewater associated with the discharging facility or activity and subject to the DEQ's jurisdiction and pursuant to DEQ rules and regulations.~~

252:605-3-61. Annual permit fee [REVOKED]

~~All holders of a regular individual discharge permit shall pay an annual permit fee over the life of the permit. Such fee shall be due upon receipt of an invoice mailed by the DEQ annually. Upon payment of the annual fee, the DEQ shall continue in effect the permit for one year but in no case past the expiration of such permit. Failure to pay such fee may result in suspension or termination of the permit. The fee schedules are in the appendices.~~

252:605-3-64. Permit transfer [REVOKED]

~~(a) **Determination by DEQ.** A permit may only be transferred automatically when the DEQ:~~

~~(1) Has received a timely and proper notice of the transfer intent, signed by both the prospective transferor and transferee, which meets the requirements of 40 CFR § 122.61(b) and which lists complete information about Oklahoma licenses and permits issued or denied to, and the compliance history of, the prospective transferor and transferee. The notice shall also contain a written certification by the prospective transferee acknowledging full responsibility for complying with the terms and conditions of the discharge permit to be transferred; and~~

~~(2) Has not notified the prospective transferor in writing prior to the stated date of transfer that permit modification or permit revocation and reissuance will be required.~~

~~(b) **Compliance prerequisite.** As a prerequisite for an approved transfer, the transferor shall be in substantial compliance with the terms and conditions of the permit and the transferor and the transferee shall be in substantial compliance with rules of the DEQ and the Environmental Quality Code.~~

252:605-3-68. Permit termination [REVOKED]

~~Requests by third parties for termination may be made subject to the provisions of 40 CFR §124.5(a). If the Executive Director determines that the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests shall not be subject to public notice, comment or hearings.~~

252:605-3-69. Compliance required [REVOKED]

~~Applicants must comply with the terms of the permits that are issued. Permits may contain provisions more stringent than these rules in order to meet Oklahoma Water Quality Standards (OAC 785:45), the Implementation of Oklahoma's Water Quality Standards (OAC 785:46), the DEQ Water Quality Standards Implementation Plan (OAC 252:690), and the Water Quality Management Plan.~~

SUBCHAPTER 5. PERMIT REQUIREMENTS [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

252:605-5-2. Terms and conditions of permits [REVOKED]

~~(a) Terms and conditions of permits issued under this chapter shall include requirements necessary to assure compliance with the Oklahoma Water Quality Standards (OAC 785:45), the Implementation of Oklahoma's Water Quality Standards (OAC 785:46), the DEQ Water Quality Standards Implementation Plan (OAC 252:690), and the Water Quality Management Plan.~~

~~(b) Where applicable, the DEQ may require municipalities to adopt and enforce appropriate requirements for dischargers to storm sewers to cause compliance with municipally held stormwater discharge permits.~~

~~(c) Where practicable and as deemed appropriate by the Executive Director and as applicable in the circumstances, any discharge permit, or authorization to discharge issued by the Executive Director under a General Permit, may contain appropriate terms, conditions, limitations and requirements related to protection of groundwater, for remediation of pollution, or for implementation of other programs under the jurisdiction of the DEQ.~~

252:605-5-4. Technology-based methodologies [REVOKED]

~~(a) Technology based methodologies include:~~

~~(1) **Industrial permits.** Effluent limitation guidelines for industry categories and pollutants are promulgated by the Environmental Protection Agency (EPA) pursuant to the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and Water Quality Act of 1987. EPA guidelines are adopted and incorporated by reference in OAC 252:605-1-5. If there are no industry category or pollutant guidelines applicable to the applicant's industry, BPJ of the permit writer shall apply.~~

~~(2) **Municipal permits.**~~

~~(A) Technology based limitations for municipal discharges are based upon the definition of "secondary treatment". The Oklahoma definition of "Secondary Treatment" is more stringent than the EPA definition under 40 CFR Part 133. Subparagraphs (B) through (G) of this paragraph contain the~~

~~EPA approved definition of secondary treatment for the State of Oklahoma which is used in the development of wasteload allocations in the municipal point source inventory.~~

~~(B) For facilities discharging to perennial streams, secondary treatment shall be defined as:~~

~~(i) A monthly average of 30 mg/l BOD_5. A $CBOD_5$ of 25 mg/l shall be considered to be equivalent to a BOD_5 of 30 mg/l.~~

~~(ii) A weekly average of 45 mg/l BOD_5. A $CBOD_5$ of 40 mg/l shall be considered to be equivalent to a BOD_5 of 45 mg/l.~~

~~(iii) The monthly average percent removal for BOD_5 or $CBOD_5$ shall not be less than 85%.~~

~~(iv) A monthly average of 30 mg/l total suspended solids (TSS).~~

~~(v) A weekly average of 45 mg/l TSS.~~

~~(vi) The monthly average percent removal for TSS shall not be less than 85%.~~

~~(vii) The pH shall be maintained between the limits of 6.5 and 9.0 standard units.~~

~~(C) For discharges to intermittent streams (those with 7 day, 2 year, low flow of zero) and for any discharge to a lake as defined in this subsection, secondary treatment shall be defined as:~~

~~(i) A monthly average of 20 mg/l BOD_5. A $CBOD_5$ of 18 mg/l shall be considered to be equivalent to a BOD_5 of 20 mg/l.~~

~~(ii) A weekly average of 30 mg/l BOD_5. A $CBOD_5$ of 25 mg/l shall be considered to be equivalent to a BOD_5 of 30 mg/l.~~

~~(iii) The monthly average percent removal for BOD_5 or $CBOD_5$ shall not be less than 85%.~~

~~(iv) A monthly average of 30 mg/l total suspended solids (TSS).~~

~~(v) A weekly average of 45 mg/l TSS.~~

~~(vi) The monthly average percent removal for TSS shall not be less than 85%.~~

~~(vii) The pH shall be maintained between the limits of 6.5 and 9.0 standard units.~~

~~(D) For discharges where treatment is solely provided by lagoons, whether the discharge is to a perennial or an intermittent stream, secondary treatment shall be defined as:~~

~~(i) A monthly average of 30 mg/l BOD_5. A $CBOD_5$ of 25 mg/l shall be considered to be equivalent to a BOD_5 of 30 mg/l.~~

~~(ii) A weekly average of 45 mg/l BOD_5. A $CBOD_5$ of 40 mg/l shall be considered to be equivalent to a BOD_5 of 45 mg/l.~~

~~(iii) The monthly average percent removal for BOD_5 or $CBOD_5$ shall not be less than 65%.~~

~~(iv) A monthly average of 90 mg/l total suspended solids (TSS).~~

~~(v) The pH shall be maintained between the limits of 6.5 and 9.0 standard units.~~

~~(vi) This paragraph (D) does not apply to a discharge to a lake as defined in this subsection.~~

~~(E) For purposes of this Section, a discharge to a lake is any discharge from a point source which is either a direct discharge into a lake, or within five river miles upstream of the conservation pool of any lake.~~

~~(F) For purposes of this Section, a lake is an impoundment of the waters of the state which exceeds fifty acre-feet in volume which either:~~

~~(i) is owned or operated by a unit of government, or~~

~~(ii) appears in Oklahoma's Clean Lakes Inventory, or~~

~~(iii) is privately owned lake which has beneficial uses similar to those of publicly owned or operated lakes.~~

~~(G) For purposes of this section, percent removal is a percentage expression of the removal efficiency across a treatment plant for a given pollutant parameter, as determined from the monthly average values of the raw wastewater influent pollutant concentrations to the facility and the monthly average values of the effluent pollutant concentrations for a given time period.~~

~~(3) In the CWA Section 208 "Water Quality Management Plan for Oklahoma," Appendix B, the only specific wasteload allocation numbers assigned are those that apply to facilities showing a need for treatment greater than secondary (e.g. 10 mg/l BOD_5; 15 mg/l TSS; 2 mg/l NH_3, N). All other facilities receive an allocation of secondary.~~

~~(4) In the CWA Section 208 "Water Quality Management Plan for Oklahoma," Appendix B, determination of the actual effluent limits for a facility with an allocation of secondary can be accomplished by finding the stream class (perennial or intermittent) and the current treatment process (mechanical plant or lagoon, etc.). For example, an activated sludge facility (mechanical plant) which discharges into a perennial stream will have effluent limits of 30 mg/l BOD_5 and 30 mg/l total suspended solids (TSS) as found in paragraph (2) of this Subsection.~~

~~(5) The Executive Director may establish in discharge permits limitations for coliform bacteria where:~~

~~(A) the proposed discharge is a "discharge to a lake" as defined in this Section, or~~

~~(B) the proposed discharge may otherwise adversely affect the beneficial uses of the waters of the state.~~

252:605-5-5. Water quality review [REVOKED]

~~(a) **EPA water quality criteria.** The provisions of "Quality Criteria for Water, 1986", United States Environmental Protection Agency, EPA 440/5-86-001, as amended, are incorporated herein by reference and will be consulted where Oklahoma's Water Quality Standards do not contain a specific criterion on a particular pollutant and a criterion is necessary to protect a designated beneficial use.~~

~~(b) In all cases where appropriate to ensure that beneficial uses of receiving waters are protected or when deemed necessary to establish wasteload allocations of multiple dischargers along a stream segment, the DEQ shall require the applicant~~

~~to perform and submit to the DEQ, or the DEQ shall perform, appropriate stream studies and water quality modeling.~~

252:605-5-6. Water quality standards variance [REVOKED]

~~Approval for any variance allowed pursuant to the Oklahoma Water Quality Standards must be obtained directly from the Oklahoma Water Resources Board and the permittee or applicant must submit written evidence of the same to the DEQ in a timely manner.~~

PART 3. GENERAL PERMITS AND STORMWATER DISCHARGES [REVOKED]

252:605-5-30. Stormwater discharges [REVOKED]

~~(a) **Prohibited without permit.** New and existing discharges of stormwater associated with industrial activity to waters of the state shall be prohibited except as authorized by a regular individual OPDES permit or an authorization under an Oklahoma General Stormwater permit promulgated under this Chapter.~~

~~(b) **Maintenance of property.** All property must be maintained to prevent the discharge of stormwater runoff which would violate permit limitations or would cause a violation of Oklahoma's Water Quality Standards. Such maintenance includes containing the areas where raw and waste chemicals are stored, cleaning of trash and spills, and preventing the accumulation of wastes in discharge areas. Additional requirements shall be as specified in any applicable individual or general permit and any required pollution prevention plan.~~

~~(c) **Permit conditions for regular individual permits.** In any regular individual permit authorizing the discharge of stormwater, the DEQ may include as conditions and limitations any condition or limitation or other requirement set forth in the *OPDES Stormwater Multi-Sector General Permit for Industrial Activities* or the *Stormwater General Permit for Construction Activities*.~~

SUBCHAPTER 7. TESTS AND REPORTS [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

252:605-7-7. Sample reporting terms [REVOKED]

~~The following apply to all dischargers:~~

~~(1) Calculate Average Concentration (in mg/l or ug/l) as the sum of the sample concentrations taken (and analyzed) during the month divided by the number of samples analyzed. Report average concentrations on the SMR/DMR form if numerical limitations are given or reporting is required by the permit.~~

~~(2) Calculate "Average limitations" as follows:~~

~~(A) "7-day average" or "weekly average", other than for bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. The "7-day average" for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.~~

~~(B) "30-day average" or "monthly average", other than for bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. The "30-day average" for bacteria is the geometric mean of the values for all effluent samples collected during a calendar month.~~

~~(3) The Daily Average Concentration means the arithmetic mean (weighted by flow value) of all the daily determinations of concentration made during a calendar month. Daily determinations of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily determination of concentration shall be the arithmetic mean (weighted by flow value) of all the samples collected during that calendar day.~~

~~(4) The numerical limitations listed under Maximum Allowable Concentration (in mg/l or ug/l) represent the highest level of the pollutant which is allowed to be discharged to a receiving water under any flow conditions of the effluent. The permittee shall report the highest single concentration for all samples analyzed during the month on the SMR/DMR form if numerical limitations are given or reporting is required by the permit.~~

~~(5) The Daily Maximum Concentration means the highest daily determination of concentration for any calendar day.~~

~~(6) Determine the Daily Average Discharge by calculating the total discharge by weight during a calendar month divided by the number of days of operation in the month. Where less than daily sampling is required by the permit, the daily average discharge shall be determined by the summation of all the measured daily discharges by weight divided by the number of days during the calendar month when the measurements were made.~~

~~(7) The Daily Maximum Discharge shall mean the total discharge by weight during any calendar day.~~

~~(8) The loading (in lbs/day) shall be calculated by multiplying each sample concentration (in mg/L) by the simultaneous effluent flow rate (in mgd) with a conversion factor of 8.34 stated in the equation: Loading (in lb/day) = Concentration (in mg/L) x Simultaneous Effluent Flow Rate (in mgd) x 8.34.~~

~~(9) Determine the Average Loading by the sum of all the loadings divided by the number of loadings calculated.~~

~~(10) The Maximum Loading shall be reported as the highest single loading for all samples analyzed during the month.~~

252:605-7-9. Laboratory analyses and reporting [REVOKED]

~~(a) **Certified laboratories.** Analytical results provided to the DEQ shall be from laboratories certified by the DEQ for the parameters reported, and be analyzed according to approved procedures (OAC 252:282, Laboratory Certification Standards). Laboratories at municipal wastewater treatment plants must have operators certified under OAC 252:710.~~

~~(b) **Sample collection.** Collect samples during normal operation and representative of the discharge, according to 40 CFR 136.3 Table II (containers, preservation and holding times).~~

~~(1) A grab sample shall consist of one sample collected in less than a 15 minute period.~~

~~(2) A composite sample shall consist of at least three discrete samples of equal volume taken at equal time intervals over the composite period, or taken proportional to flow rate, and combined into one. 24 hour composite samples shall contain at least 12 discrete samples. The number of discrete samples shall be increased where the wastewater loading is highly variable.~~

~~(3) Continuous or totalized samples shall be continuously and automatically taken or recorded.~~

~~(c) **Flow measurement.** Determine the volume of flow at the time of sample collection and report it with the analytical results. Measurement devices and methods must be installed, calibrated and maintained to measure flows within 10% of true discharge rates. Records of pump running times and rates, if accurate, may be used to calculate total daily flow.~~

~~(d) **DMR reports.** Mail DMR forms [DEQ approved discharge monitoring report form; see 40 CFR 122.41(L)(4)(I)] to the Water Quality Division at the frequency required in the permit. Report daily average and maximum flow rates in MGD unless the permit specifies otherwise.~~

PART 3. MUNICIPAL/DOMESTIC FACILITIES [REVOKED]

252:605-7-31. Municipal laboratories [REVOKED]

~~(a) The provisions of this Section are minimum requirements.~~

~~(b) Results of all control tests shall be made available to plant operators in a timely fashion for use in operational control of the facility.~~

~~(c) All plants must determine the Daily flow and enter it in the operating records at the frequency specified in the permit. Flow measurements are also necessary when composite samples are collected. For plants not equipped with continuous flow recorders, occasional determinations of the flow over a 24 hour period will be necessary to establish a flow pattern so that occasional flow measurements will provide an indication of the total flow.~~

~~(d) Minimum control tests are tabulated in Appendix D of this Chapter, entitled, "Minimum Control Tests for Municipal Wastewater Treatment Facilities." In addition to these tests, routine observations, tests or measurements as to the quantity and quality of screenings, grit, sludge pumped from clarifiers, sludge drawn to drying beds or other means of disposal, the weather conditions must be entered in the operating records. The Executive Director may require that all effluent samples be collected from the outfall pipe at the point of discharge where conditions are such that the effluent quality will likely be different at this point than it is in the final treatment or storage unit.~~

~~(e) Stream monitoring requirements shall be as set forth in this subsection and as specified in any applicable permit or order of the Executive Director. These requirements are established in order to determine compliance with applicable standards. Unless otherwise specified in the permit, collect stream samples above and below the point of wastewater discharge with consideration being given to ease of access, mixing of plant effluent and the receiving stream, and the oxygen "sag" point of the receiving stream.~~

~~(1) Determine Dissolved oxygen, temperature, pH, and stream appearance twice per month at least two weeks apart, but not more often than required in the permit for effluent sampling for BOD_5.~~

~~(2) Test for coliform bacteria twice per month at least two weeks apart, but not more often than required in the permit for effluent sampling for coliform, if the permit for discharge contains coliform limits.~~

~~(3) The DEQ may require additional tests when problems develop in plant operation, or as necessary to determine compliance with the purposes and objectives of this Chapter.~~

~~(f) The Executive Director may grant variances from the requirements in this Section upon a written request and a showing by the permittee that the requested variance will:~~

~~(1) Not adversely effect the quality of the discharge nor the environment;~~

~~(2) Avoid an excessive, requirement; and~~

~~(3) Not hinder the proper operations of the treatment facility.~~

252:605-7-32. Municipal operating records [REVOKED]

~~(a) **Operating records.** Keep a daily record of the control tests required in OAC 252:605-7-31 on forms prepared or approved by the DEQ. Make Entries for the date samples are collected and indicate where and by whom the observations were made. If monitoring beyond the minimum requirements, include the results of all analyses on the monthly report and use them to calculate weekly or monthly averages. For each required measurement or sample, record:~~

~~(1) The date, exact place and time of sample and indicate whether a grab sample or composite.~~

~~(2) The dates the analyses were performed.~~

~~(3) The laboratory and name of the operator who performed each analysis.~~

~~(4) The analytical techniques or methods used.~~

~~(5) The results of all analyses.~~

~~(6) The instantaneous flow at the time of grab sample collection or a record of each flow taken while collecting a composite sample.~~

~~(7) The method of composite sample calculations and other calculations.~~

~~(b)~~ ~~**Maintain records.**~~ ~~The facility owner shall keep records of all laboratory checks and control tests, a copy of the monthly operational report and all laboratory work sheets at least three (3) years. These records shall be available for inspection by DEQ personnel.~~

PART 5. INDUSTRIAL [REVOKED]

252:605-7-51. Industrial flow measuring and sampling [REVOKED]

~~(a)~~ ~~If required by the DEQ, place a flow-measuring device to measure only the wastewater discharge.~~

~~(b)~~ ~~Provide easily accessible sampling points at the outfall of each treatment structure.~~

~~(c)~~ ~~Upon request by the DEQ, provide five days prior notice to the DEQ of the next sampling schedule so that DEQ personnel may be present to observe and collect split samples.~~

APPENDIX D. MINIMUM CONTROL TESTS FOR MUNICIPAL WASTEWATER [REVOKED]

Appendix D is subdivided into seven (7) sections which address minimum control tests for specific treatment processes. A facility must perform the minimum control tests for all processes which it utilizes. For example, a trickling filter facility which has an anaerobic digester must comply with Tables 1-2, 1-5 and 1-6. Section 252:605-7-31 contains stream monitoring requirements. All facilities which discharge must perform these tests.

The following abbreviations, definitions and notations are used in Appendix D.

D.O. -Dissolved Oxygen
BOD_5 -Five day biochemical oxygen demand
TSS -Total Suspended Solids
SAR -Sodium absorption ratio
2/wk -Two times each week
3/wk -Three times each week
5/wk -Five times each week
7/wk -Seven times each week
Daily -Each day

3 hr comp -A composite sample collected over a three hour period of time and consisting of three effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.

6 hr comp -A composite sample collected over a six hour period of time and consisting of six effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.

12 hr comp -A composite sample collected over a twelve hour period of time and consisting of twelve effluent portions collected no closer together than one hour and composited according to flow.

Grab sample -An individual sample collected in less than 15 minutes.

Sequential Batch Reactor (SBR) Composite Sample

SBR Sample -A minimum of three aliquots collected from the discharge of a reactor. The first aliquot must be

collected no later than 1/4 time, the second approximately 1/2 time, and the third no earlier than 3/4 time from the initiation of a discharge cycle to the stoppage of the discharge cycle. The three aliquots shall consist of equal portions unless the rate of discharge from the reactor varies significantly during the cycle, in which case aliquots shall be proportional to the measurement of the flow occurring at the time of their collection.

Single Composite SBR Sample -One SBR sample collected from each reactor during one discharge cycle and composited proportional to the volume discharged from each of the reactors. The sample from at least one of the reactors shall represent the expected period of peak influent organic loading.

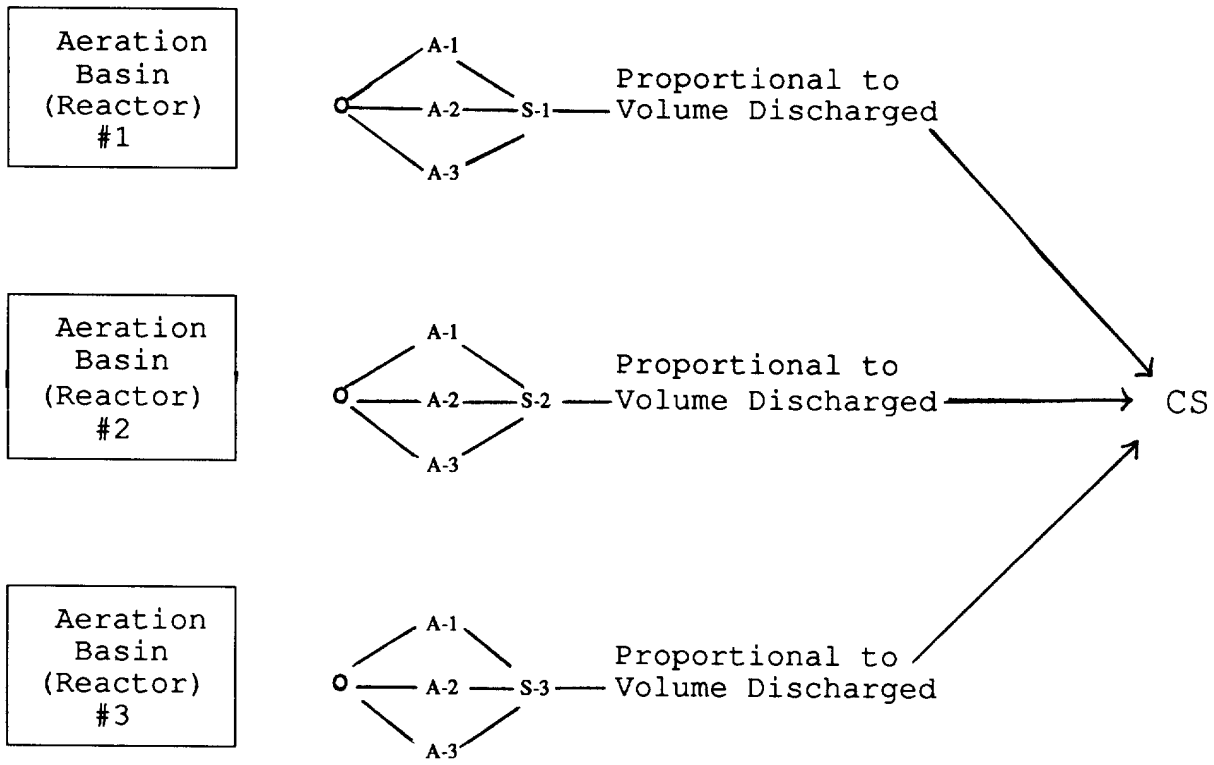
Two-Cycle Composite SBR Sample -One SBR sample collected from two consecutive discharge cycles of each reactor and composited proportional to the volume discharged during each cycle of each reactor. The sample from at least one cycle shall represent the expected period of peak influent organic loading.

Three-Cycle Composite SBR Sample -One SBR sample collected from three consecutive discharge cycles of each reactor and composited proportional to the volume discharged during each cycle of each reactor. The sample from at least one cycle shall represent the expected period of peak influent organic loading.

Example of a Single Composite SBR Sample

(Two-cycle and three-cycle composited SBR samples are multiples of these composited proportional to the volume discharged in each cycle).

[This example assumes an SBR plant with three reactors.]



A-1 = 1st Aliquot
A-2 = 2nd Aliquot
A-3 = 3rd Aliquot

(A-1) + (A-2) + (A-3) = S-_

S-1 = SBR Sample from Reactor #1
S-2 = SBR Sample from Reactor #2
S-3 = SBR Sample from Reactor #3

(S-1) + (S-2) + (S-3) = CS

CS = Single Composite SBR Sample

Depending on design flow, single, two-cycle, or three-cycle SBR Composite Sample results are used for reporting purposes on discharge monitoring reports.

TABLE 1-1 Discharging Lagoons

Parameters & Sample Site	Design Capacity (mgd) 0 - <0.1	.1 -<0.5	0.5-<1.0	1.0-<5.0	5.0-<10.0	≥10.0
pH-each cell & effluent	2/wk	2/wk	2/wk	2/wk	2/wk	2/wk
D.O.-each cell & effluent	2/wk	2/wk	2/wk	2/wk	2/wk	2/wk
Alkalinity-each cell & effluent	2/wk	2/wk	2/wk	2/wk	2/wk	2/wk
Temperature-each cell & effluent	2/wk	2/wk	2/wk	2/wk	2/wk	2/wk
Flow-effluent	2/wk Instan-taneous	5/wk Instan-taneous	7/wk Totalized	7/wk Totalized	7/wk Totalized	7/wk Totalized
BOD_5-influent & effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
TSS-effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
Appearance of effluent	2/wk	2/wk	2/wk	2/wk	2/wk	2/wk

TABLE 1-2 Trickling Filter Plants

Parameters & Sample Site	Design Capacity (mgd) 0 - <0.10	.1 - <0.5	0.5-<1.0	1.0-<5.0	5.0-<10.0	≥10.0
pH-each influent & effluent	Daily	Daily	Daily	Daily	Daily	Daily
D.O.-effluent	Daily	Daily	Daily	Daily	Daily	Daily
Temperature-effluent	Daily	Daily	Daily	Daily	Daily	Daily
Settlement Solids-influent	Daily	Daily	Daily	Daily	Daily	Daily
Flow	Daily	Daily	Daily	Daily	Daily	Daily
BOD_5-influent & effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
TSS-influent & effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
Chlorine Residual (only if Cl is added as part of treatment)	Daily	Daily	Daily	Daily	Daily	Daily

TABLE 1-3 Activated Sludge Facilities (including extended aeration and oxidation ditches and including sequential batch reactors)

Parameters & Sample Site	Design Capacity (mgd) 0 - <0.10	.1 - <0.5	0.5-<1.0	1.0-<5.0	5.0-<10.0	≥10.0
pH influent & effluent	Daily	Daily	Daily	Daily	Daily	Daily
D.O.-effluent	Daily	Daily	Daily	Daily	Daily	Daily
Temperature-effluent	Daily	Daily	Daily	Daily	Daily	Daily
Settleable Solids-influent	Daily	Daily	Daily	Daily	Daily	Daily
Flow	Daily	Daily	Daily	Daily	Daily	Daily
BOD_5-influent & effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
TSS-influent & effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
BOD_5 and TSS Effluent for SBR Process	1/mo single composite SBR sample	2/mo single composite SBR sample	3/mo single composite SBR sample	1/wk 2-cycle composite SBR sample	5/wk 3-cycle composite SBR sample	7/wk 3-cycle composite SBR sample
Chlorine Residual (if Cl added as part of treatment)	Daily	Daily	Daily	Daily	Daily	Daily
30 minute Settleability-mixed liquor	Daily	Daily	Daily	Daily	Daily	Daily
Sludge Volume index	2/wk	2/wk	3/wk	3/wk	5/wk	7/wk
D.O.-aeration basins	2/wk	2/wk	3/wk	3/wk	5/wk	7/wk
Waste Activated Sludge Control Tests-select 1., 2., or 3. below- 1. Food/Mass 2. Mean Cell 3. Sludge age	as	necessary to control operation	3/wk	3/wk	3/wk	3/wk

TABLE 1-4 Aerobic Digestors

Parameters & Sample Site	Design Capacity (mgd) 0 - <0.1	.1 - <0.5	0.5-<1.0	1.0-<5.0	5.0-<10.0	≥10.0
D.O.-basin contents	2/wk	2/wk	3/wk	5/wk	7/wk	7/wk
pH-basin contents	2/wk	2/wk	3/wk	5/wk	7/wk	7/wk
% Volatile suspended solids destruction	None	None	None	None	3/wk	3/wk
% Solids	None	None	None	when drawn	when drawn	when drawn

TABLE 1-5 Anaerobic Digestors

Parameters & Sample Site	Design Capacity (mgd) 0 - <0.10	.1 - <0.5	0.5-<1.0	1.0-<5.0	5.0-<10.0	≥10.0
pH	1/wk	1/wk	3/wk	5/wk	7/wk	7/wk
Temperature	1/wk	1/wk	3/wk	5/wk	7/wk	7/wk
Volatile Acids	when drawn	when drawn	2/wk	3/wk	3/wk	3/wk
Total Alkalinity	when drawn	when drawn	2/wk	3/wk	3/wk	3/wk
% Volatile suspended solids	None	None	None	None	3/wk	3/wk
% Solids	None	None	None	when drawn	when drawn	when drawn

APPENDIX G. FEES FOR NON-INDUSTRIAL DISCHARGE PERMITS [REVOKED]

Annual Fee Rating System - Fees for non-industrial discharge permits will be calculated according to an Annual Fee Rating System as follows:

(1) The system will contain the following factors to evaluate the complexity of the permit:

(a) Discharge complexity level designation

(b) Major/minor facility designation

(c) Actual wastewater flow rate over the previous twelve (12) months

(d) Outfalls

(e) Pretreatment Program.

(2) Points shall be calculated for each of the complexity factors listed in paragraph (1) according to the Instructions for completing the annual permit fee rating sheet (Table G-1) and the annual fee rating work sheet (Table G-2).

(3) The total annual fee is calculated by adding the annual discharge fee and the annual pretreatment fee. The annual discharge fee shall be calculated by multiplying the total number of points generated using **Table G-2 items 1-4** by $27. The annual pretreatment fee shall be calculated by multiplying the total number of points generated using **Table G-2 item 5** by $26.35.

(4) Fees for other disposal methods shall be in addition to the fees for discharge and shall be in accordance with other applicable rules of the Department.

(5) The annual fee shall be paid in advance by all facilities which have a permit in effect as of June 30 of each year. Fees in excess of $1,000 may be paid quarterly upon the request of the permittee.

(6) The first year fee for new facilities will be calculated according to the Annual Fee Rating System. Complexity factors based on operational levels at the facility will be calculated using levels proposed in the application. The first year fee for new facilities shall be prorated and shall cover the period beginning the issuance date of the permit and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant with the permit and will be due within 20 days of receipt.

(7) A statement of fees due will be mailed to the permittee at the beginning of each fiscal year (July 1).

(8) Fees not received by the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.

(9) If the fees have not been received by the Department within fifteen (15) days after the due date set forth in the statement, the permit will be subject to revocation after notice and opportunity for hearing.

(10) Fee payment shall be made by check, draft, money order payable to the Oklahoma Department of Environmental Quality and mailed or hand delivered to the Department's offices.

(11) State appropriations and federal grants will be used to offset the annual fee where possible.

(12) The dollar value per point in paragraph (3) above will continue in effect unless a workload and budget analysis is performed in the previous fiscal year justifying that a fee increase is necessary. This analysis must be reviewed and approved by the Environmental Quality Board.

TABLE G-1 INSTRUCTIONS FOR COMPLETING NON-INDUSTRIAL DISCHARGE PERMIT ANNUAL FEE RATING WORK SHEET
(For Staff Use)

1. DISCHARGE COMPLEXITY LEVEL DESIGNATION

From the permit application and permit, determine the appropriate Standard Industrial Classification (SIC) codes for each discharge point by determining the processes and products reported for the facility for sewage treatment plants (SIC 4952), check complexity designation level 1. For other non-industrial discharges, use the latest available edition of Table 1 or 2 from the U.S. Environmental Protection Agency NPDES Permit Rating Worksheet "Complexity Groups for SIC Codes" to determine the applicable subcategory and the related complexity designation. When more than one category applies to effluent from a single discharge point, select the category with the highest complexity level designation. Level 1 is the lowest complexity level designation and Level 5 is the highest.

2. MAJOR/MINOR NPDES FACILITY DESIGNATION

Determine if the facility is rated as a major facility according to the latest EPA NPDES Permit Rating System. Check the appropriate answer and record the applicable point amount.

3. WASTEWATER FLOW

On the work sheet under the wastewater flow, indicate the appropriate flow range, based on actual flow rate from the previous twelve (12) months.

4. OUTFALLS

On the work sheet under outfalls, indicate the number of outfalls.

5. PRETREATMENT

On the work sheet under pretreatment, indicate whether the applicant implements a DEQ-required/approved pretreatment program.

6. RATING POINTS FOR DISCHARGE

Sum the rating points assigned to each of the four sections and record the total in the discharge rating points blank.

7. DISCHARGE FEE

Multiply the points for discharge by the appropriate $/point as found in section (3) above.

8. RATING POINTS FOR PRETREATMENT

Sum the rating points assigned to the two pretreatment sections and record the total in the pretreatment rating points blank.

9. PRETREATMENT FEE

Multiply the points for pretreatment by the appropriate $/point as found in section (3) above.

10. ANNUAL PERMIT FEE

The annual permit fee will be computed by adding the fee for discharge and the fee for pretreatment.

TABLE G-2. DISCHARGE PERMIT ANNUAL FEE RATING WORK SHEET

PERMIT NO._____

PERMITTEE_____DATE___/___/___

DISCHARGE FEE CALCULATION

1. DISCHARGE COMPLEXITY DESIGNATION

SELECTED OUTFALL POINT #_____ (with the highest complexity)

SELECTED SIC CODE _____

Complexity Designation Level =
_____ 1 (20 points)
_____ 2 (25 points)
_____ 3 (30 points)
_____ 4 (35 points)
_____ 5 (40 points)

DISCHARGE COMPLEXITY DESIGNATION POINTS_____

2. MAJOR/MINOR NPDES FACILITY DESIGNATION

Is the facility rated as a major facility according to the latest version of the EPA NPDES Permit Rating System?

_____ Yes, then points = 120
_____ No, then points = 12

MAJOR/MINOR FACILITY DESIGNATION POINTS_____

3. WASTEWATER FLOW

FLOW VOLUME_____ (4 point per mgd)

Total points _____

4. OUTFALLS

Number of Outfalls _____ (8 points per outfall over 1, up to 10 outfalls)

Total points _____

5. PRETREATMENT

Does the facility implement a pretreatment program (charged one per city/authority)?

_____ Yes, then points = 80 points + 20 points per mgd X 1/3 (Flow volume (sum of flow rates of all facilities operated by the city/authority) _____
+ 20 points per categorical user (with a cap of 10) x 2/3

_____ No, then points = 0 points

Totals points _____
==========

(A) TOTAL RATING POINTS FROM DISCHARGE CALCULATIONS

(B) $/POINT FROM SECTION (3) ABOVE

(C) **DISCHARGE FEE** = ((A) x (B))

(D) TOTAL RATING POINTS FROM PRETREATMENT CALCULATIONS

(E) $/POINT FROM SECTION (3) ABOVE

(F) **PRETREATMENT FEE** = ((D) X (E))

(G) **TOTAL FEE** = ((C) + (F))

APPENDIX H. ANIMAL INDUSTRIAL DISCHARGE PERMIT FEES [REVOKED]

Annual Fee Rating System - Fees for industrial discharge permits will be calculated according to an Annual Fee Rating System as follows:

(1) The system will contain the following factors to evaluate the complexity of the permit:

(a) Major/minor facility designation
(b) Discharge complexity level designation
(c) Receiving stream beneficial use designation
(d) Toxic pollutant potential
(e) Traditional pollutant loading
(f) Additional factors

(2) Points shall be calculated for each of the complexity factors listed in paragraph (1) according to the instructions for completing annual permit fee rating sheet in Table H-1 and the annual fee rating worksheet (in substantially same form as Table H-2).

(3) The annual fee shall be calculated by multiplying the number of points by $41.00, provided that the minimum fee shall be $100.00 per year and the maximum fee shall be $15,000.00 per year.

(4) Fees for other disposal methods shall be in addition to the fees for discharge and shall be in accordance with other applicable rules of the Department.

(5) The annual fee shall be paid in advance by all facilities which have a permit in effect as of June 30 of each year.

(6) The first year fee for new facilities will be calculated according to the Annual Fee Rating System. Complexity factors based on operational levels at the facility will be calculated using levels proposed in the application. The first year fee for new facilities shall be prorated and covers the period beginning the issuance date of the permit and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant within 10 days of receipt of application and will be due within 20 days of receipt of application.

(7) A statement of fees due will be mailed to the permittee on or as soon as practical after July 1 of each year.

(8) State appropriations and federal grants will be used to offset the annual fee where possible.

(9) The dollar value per point in paragraph (3) above will continue in effect unless a workload and budget analysis is performed in the previous fiscal year justifying that a fee increase is necessary. This analysis must be reviewed and approved by the Environmental Quality Board.

TABLE H-1 INSTRUCTIONS FOR COMPLETING INDUSTRIAL DISCHARGE PERMIT ANNUAL FEE RATING WORKSHEET (For Staff Use)

1. MAJOR/MINOR FACILITY DESIGNATION

Determine if the facility is rated as a major facility according to the latest EPA NPDES Non-Municipal Permit Rating System. Check the appropriate answer and record $300 for a minor and $3000 for a major in the base fee blank.

2. DISCHARGE COMPLEXITY LEVEL DESIGNATION

From the permit application and permit, determine the appropriate Standard Industrial Classification (SIC) codes for each discharge point by determining the processes and products reported for the industry. Use the latest available edition of Table 1 or 2 from the U.S. Environmental Protection Agency NPDES Permit Rating Worksheet "Complexity Groups for SIC Codes" to determine the applicable Industrial Subcategory and the related complexity designation. When more than one category applies to effluents from a single discharge point, select the category with the highest complexity level designation. Level I is the lowest complexity level designation and Level VI is the highest. If a facility is covered by SIC code 9999 (unclassifiable establishments), a Complexity Designation Level will be assigned as follows:

A. If the facility is designated as major by the Environmental Protection Agency, check Category V.

B. If the facility is designated as minor by the Environmental Protection Agency, check Category II.

Record the applicable SIC code on the worksheet, then enter the highest complexity designation among all discharge points.

3. RECEIVING STREAM BENEFICIAL USE DESIGNATION

Review the permit application to determine the name of the receiving stream for each discharge point. Review the current Oklahoma Water Quality Standards and determine the beneficial use designations for the stream. Mark the beneficial use(s) on the Worksheet and add the corresponding point amounts. If there is more than one receiving stream, calculate the beneficial use points for each and record the highest total.

4. TOXIC POLLUTANT POTENTIAL

From the permit application and permit, determine the Standard Industrial Classification (SIC) codes for each discharge point by determining the processes and products reported for the industry. Use the primary SIC to determine if there are industrial subcategories for that SIC code. Use the latest edition of the U.S. Environmental Protection Agency NPDES Permit Rating Work Sheet to determine the applicable toxicity group. Use the Code of Federal Regulations (CFR) part and sub-part numbers to help identify the appropriate subcategory. If there is more than one applicable subcategory, select the subcategory that has the highest toxicity group. Enter the industrial subcategory number on the work sheet and check the appropriate Total toxicity potential number. Note that regardless of the facility's SIC code, if the facility discharges no process waste stream to a receiving water,

the points scored are 0. Enter and record the applicable point amount.

5. TRADITIONAL POLLUTANT LOADING

Determine if the permit contains discharge limitations for biochemical oxygen demand (BOD), chemical oxygen demand (COD), total suspended solids (TSS) and/or ammonia (or nitrogen). Points should be assigned for the parameters limited in the permit. For the purposes of determining permit fees, the daily average load for each parameter will be calculated, based upon the reported values for the parameter and flow rates submitted on self monitoring report (SMR) and/or discharge monitoring report (DMR) forms for the past twelve (12) months.

Calculate the BOD and/or COD daily average loads and record the applicable points for each. In some cases, oxygen demand may be limited by some parameter other then BOD or COD [i.e., ultimate oxygen demand (UOD), total organic carbon (TOC), or total oxygen demand (TOD)]. In such cases, record the alternate parameter in the applicable space and calculate the average load and report the applicable point amount.

Sum the points for each parameter and record the total traditional pollutant points in the space provided.

7. ADDITIONAL FACTORS

Determine if the permitted effluent limitations were assigned based on dissolved oxygen (DO) wasteload allocation modeling, including but not limited to the DO Desktop Model, for the receiving perennial stream. Check the appropriate answer and record the points required.

Determine if any permitted effluent limitations were assigned based on a wasteload allocation modeling for conservative parameters. Check the appropriate answer and record the points required.

Determine if biomonitoring is required for any discharge point listed on the permit. Check the appropriate answer and record the points required.

Determine if the facility has had whole effluent toxicity studies performed within the last two years. If so, determine if the results of any of those tests indicated that the effluent from this facility is/was toxic at the critical low-flow dilution. Check the appropriate answer and record the points required.

Determine if the facility is currently required by the U.S. Environmental Protection Agency or the Board to implement a Toxicity Identification Evaluation (TIE) or Toxicity Reduction Evaluation (TRE). Check the appropriate answer and record the points required.

8. TOTAL RATING POINTS

Sum the rating points assigned to each of the five sections and record the total in the total rating points blank.

9. ANNUAL PERMIT FEE

The annual permit fee will be computed by multiplying the rating factor (in $ per point) by the calculated total rating points plus the base fee rate.

TABLE H-2 INDUSTRIAL DISCHARGE PERMIT ANNUAL FEE RATING WORKSHEET

PERMIT NO._____

PERMITTEE_____DATE___/___/___

1. MAJOR/MINOR DETERMINATION

Is the facility rated as a major facility according to the latest version of the EPA NPDES Non-Municipal Permit Rating System?

_____ Yes, then $3000 is the base fee
_____ No, then $300 is the base fee

2. DISCHARGE COMPLEXITY DESIGNATION

SELECTED OUTFALL POINT #_____ (with the highest complexity)

SELECTED SIC CODE _____

Complexity Designation Level =

_____ I (0 points)
_____ II (10 points)
_____ III (20 points)
_____ IV (30 points)
_____ V (40 points)
_____ VI (20 points)

DISCHARGE COMPLEXITY DESIGNATION POINTS_____

3. RECEIVING STREAM BENEFICIAL USE DESIGNATION

Selected Discharge Point #_____ (with the highest points)

Beneficial Use Designations and their assigned points for the selected Receiving Stream:

_____ (5 points) Public and Private Water Supply
_____ (3 points) Emergency Public and Private Water Supply
_____ (5 points) Fish and Wildlife Propagation/Warm Water Aquatic Community
_____ (1 point) Fish and Wildlife Propagation/Habitat Limited Aquatic Community
_____ (10 points) Fish and Wildlife Propagation/Cool Water Aquatic Community
_____ (10 points) Fish and Wildlife Propagation/Trout Fisheries (put and take)
_____ (1 point) Agriculture
_____ (3 points) Agriculture/Class I Irrigation
_____ (2 points) Agriculture/Class II Irrigation
_____ (1 point) Agriculture/Class III Irrigation
_____ (0 points) Hydroelectric Power
_____ (1 point) Industrial and Municipal Process and Cooling Water
_____ (5 points) Primary Body Contact Recreation
_____ (1 point) Secondary Body Contact Recreation
_____ (0 points) Navigation

_____ (1 point) Aesthetics
_____ (10 points) Limitation for Additional Protection

RECEIVING STREAM POINTS_____

4. TOXIC POLLUTANT POTENTIAL

Selected Outfall Point #_____ (with highest Total toxicity number)
Selected SIC Code _____
Selected Industrial Subcategory Code _____

Toxicity Groups	**Points**
No Process Waste Stream	0
_____ 1.	5
_____ 2.	10
_____ 3.	15
_____ 4.	20
_____ 5.	25
_____ 6.	30
_____ 7.	35
_____ 8.	40
_____ 9.	45
_____ 10.	50

TOXIC POLLUTANT POTENTIAL POINTS_____

5. TRADITIONAL POLLUTANTS

A. BOD or _____
Daily Average Load =

_____	< 50 lb/day	(0 points)
_____	50 - 500	(5 points)
_____	> 500 - 1000	(10 points)
_____	>1000 - 3000	(20 points)
_____	>3000 - 5000	(30 points)
_____	>5000 lb/day	(40 points)

BOD Points _____

B. COD or _____
Daily Average Load =

_____	< 100 lb/day	(0 points)
_____	100 - 500	(5 points)
_____	> 500 - 1000	(10 points)
_____	> 1000 - 5000	(20 points)
_____	> 5000 - 10000	(30 points)
_____	>10000 - lb/day	(40 points)

COD Points _____

C. TSS
Daily Average Load =

_____	< 100 lb/day	(0 points)
_____	100 - 500	(5 points)

_____ > 500 - 1000 (10 points)
_____ > 1000 - 5000 (20 points)
_____ > 5000 - 10000 (30 points)
_____ >10000 lb/day (40 points)

TSS Points _____

D. AMMONIA or _____
Daily Average Load =
_____ < 200 lb/day (0 points)
_____ 200 - 500 (5 points)
_____ > 500 - 1000 (10 points)
_____ >1000 - 5000 (20 points)
_____ >5000 - 10000 (30 points)
_____ >10000 lb/day (40 points)

AMMONIA (or nitrogen) Points _____

TOTAL POLLUTANT POINTS _____

6. ADDITIONAL FACTORS

Were any of the effluent limitations assigned to the discharge based on DO related wasteload allocation modeling for the receiving perennial stream?

_____ Yes, then points = 5
_____ No, then points = 0

Were any of the effluent limitations assigned to the discharge based on a wasteload allocation modeling for conservative parameters?

_____ Yes, then points = 5
_____ No, then points = 0

Is biomonitoring required for any discharge point listed on the permits?

_____ Yes, then points 10
_____ No, then points = 0

Has any effluent from the facility shown toxicity at the critical low flow dilution on a whole effluent toxicity study within the last two calendar years?

_____ Yes, then points = 25
_____ No, then points = 0

Is the facility currently required by the U.S. Environmental Protection Agency or the Board to implement a Toxicity Identification Evaluation (TIE) or a Toxicity Reduction Evaluation (TRE).

_____ Yes, then points = 100
_____ No, then points = 0

ADDITIONAL FACTORS POINTS_____

==========

(A) BASE FEE $

(B) RATING FACTOR ($_____/point)

(C) TOTAL RATING POINTS_____

(D) TOTAL AMOUNT DUE (A) + ((B) X (C)) $

APPENDIX I. FEES FOR STORMWATER PERMITS AND OTHER GENERAL PERMITS [REVOKED]

(A) The fee for MS4 stormwater permits shall be $550.
(B) The fee for all general permits, including Authorizations under general stormwater shall be $254.21.
(C) The annual fee shall be paid in advance by all facilities which have been authorized to discharge under a permit as of June 30 of each year.
(D) Fee payment shall be made by check, draft, or money order payable to the Oklahoma Department of Environmental Quality and mailed or hand delivered to the Department's offices.
(E) The first year fee for facilities shall be prorated and shall cover the period beginning the issuance date of the authorization and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant within 10 days of receipt of application and will be due within 20 days of receipt of application.
(F) A statement of fees due will be mailed to the permittee at the beginning of each fiscal year (July 1).
(G) Fees not received by the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.
(H) If the fees have not been received by the Department within fifteen (15) days after the due date set forth in the statement, authorization to discharge under the permit will be subject to revocation after notice and opportunity for hearing.
(I) State appropriations and federal grants will be used to offset the annual fee where possible.
(J) The fees in paragraphs (A) and (B) above will continue in effect unless a workload and budget analysis is performed in the previous fiscal year justifying that a fee increase is necessary. This analysis must be reviewed and approved by the Environmental Quality Board.

APPENDIX J. FEES FOR INDIVIDUAL DISCHARGE PERMITS FOR CATEGORICAL INDUSTRIES [REVOKED]

(A) The fee for individual discharge permits for Categorical industries shall be $730.

(B) Fee payment shall be made by check, draft, or money order payable to the Oklahoma Department of Environmental Quality and mailed or hand delivered to the Department's offices.

(C) The annual fee shall be paid in advance by all facilities which have a permit in effect as of June 30 of each year.

(D) The first year fee for facilities shall be prorated and shall cover the period beginning the issuance date of the permit and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant within 10 days of receipt of application and will be due within 20 days of receipt of application.

(E) A statement of fees due will be mailed to the permittee at the beginning of each fiscal year (July 1).

(F) Fees not received by the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.

(G) If the fees have not been received by the Department within fifteen (15) days after the due date set forth in the statement, the permit will be subject to revocation after notice and opportunity for hearing.

(H) State appropriations and federal grants will be used to offset the annual fee where possible.

(I) The fees in paragraph (A) above will continue in effect unless a workload and budget analysis is performed in the previous fiscal year justifying that a fee increase is necessary. This analysis must be reviewed and approved by the Environmental Quality Board.

[OAR Docket #04-832; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS

[OAR Docket #04-833]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
Chapter 606. Oklahoma Pollutant Discharge Elimination System (Opdes) Standards [NEW]
AUTHORITY:
Environmental Quality Board and Water Quality Management Advisory Council powers and duties, 27A O.S. §§ 2-2-101, 2-2-201 and the Oklahoma Pollution Discharge Elimination System Act, 27A. O.S. § 2-6-201 *et seq.*
DATES:
Comment period:
December 1, 2003 through January 13, 2004
Public hearing:
January 13, 2004 and February 27, 2004
Adoption:
February 27, 2004
Submitted to Governor:
March 5, 2004
Submitted to House:
March 5, 2004
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March 5, 2004
Gubernatorial approval:
April 16, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2004
Final adoption:
April 28, 2004
Effective:
June 11, 2004
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated standards:
40 CFR Part 116
40 CFR Part 117
40 CFR Sec. 122.1 (b)
40 CFR Sec. 122.2
40 CFR Sec. 122.3
40 CFR Sec. 122.4
40 CFR Sec. 122.5
40 CFR Sec. 122.6
40 CFR Sec. 122.7 (b) and (c)
40 CFR Sec. 122.21
40 CFR Sec. 122.22
40 CFR Sec. 122.24
40 CFR Sec. 122.25
40 CFR Sec. 122.26
40 CFR Sec. 122.27
40 CFR Sec. 122.28 (a) and (b)
40 CFR Sec. 122.29
40 CFR Sec. 122.30
40 CFR Sec. 122.31
40 CFR Sec. 122.32
40 CFR Sec. 122.33
40 CFR Sec. 122.34
40 CFR Sec. 122.35
40 CFR Sec. 122.36
40 CFR Sec. 122.41
40 CFR Sec. 122.42
40 CFR Sec. 122.43
40 CFR Sec. 122.44
40 CFR Sec. 122.45
40 CFR Sec. 122.46
40 CFR Sec. 122.47 (a)
40 CFR Sec. 122.48
40 CFR Sec. 122.50
40 CFR Sec. 122.61
40 CFR Sec. 122.62
40 CFR Sec. 122.63
40 CFR Sec. 122.64
40 CFR Part 122, Appendices A through I
40 CFR Sec. 124.1
40 CFR Sec. 124.2
40 CFR Sec. 124.3 (a), (c), and (d)
40 CFR Sec. 124.5 (a),(c),(d) and (f)
40 CFR Sec. 124.6 (a),(c),(d) and (e)
40 CFR Sec. 124.7
40 CFR Sec. 124.8
40 CFR Sec. 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)
40 CFR Sec. 124.11
40 CFR Sec. 124.12 (a) and (c)
40 CFR Sec. 124.13
40 CFR Sec. 124.14
40 CFR Sec. 124.15
40 CFR Sec. 124.17 (a) and (c)
40 CFR Sec. 124.51 (a) and (b)
40 CFR Sec. 124.52
40 CFR Sec. 124.56
40 CFR Sec. 124.57 (a)
40 CFR Sec. 124.59
40 CFR Sec. 124.62
40 CFR Sec. 124.66
40 CFR Part 124 Subpart A
40 CFR Part 124, Subpart B
40 CFR Part 124 Subpart D
40 CFR Part 124, Subpart H
40 CFR Sec. Subpart I
40 CFR Part 129
40 CFR Part 136
40 CFR Sec 401-471
40 CFR Sec 110.6
40 CFR Part 302
40 CFR Sec. 503.1
40 CFR Sec. 503.2
40 CFR Sec. 503.3
40 CFR Sec. 503.4
40 CFR Sec. 503.5
40 CFR Sec. 503.6(a)-(e),(g)-(j)
40 CFR Sec. 503.7
40 CFR Sec. 503.8
40 CFR Sec. 503.9
40 CFR Sec. 503.10(a),(b)(1)&(2),(e),(f),(g)
40 CFR Sec. 503.11
40 CFR Sec. 503.12
40 CFR Sec. 503.13
40 CFR Sec. 503.14
40 CFR Sec. 503.15
40 CFR Sec. 503.16(a)
40 CFR Sec. 503.17(a)
40 CFR Sec. 503.18
40 CFR Sec. 503.30
40 CFR Sec. 503.31
40 CFR Sec. 503.32(a), (b)
40 CFR Sec. 503.33(a), (b)(1)-(11)
40 CFR Sec. 503.40
40 CFR Sec. 503.41
40 CFR Sec. 503.42
40 CFR Sec. 503.43
40 CFR Sec. 503.44
40 CFR Sec. 503.45
40 CFR Sec. 503.46
40 CFR Sec. 503.47
40 CFR Sec. 503.48
40 CFR Part 503, Appendix A
40 CFR Part 503, Appendix B

Incorporating rules:
252:606-1-3
Availability:
From the contact person listed below
ANALYSIS:
The purpose of the proposed new chapter is to combine two existing rule chapters that both address parts of the NPDES/OPDES program into one chapter. This will aid in the understanding of the NPDES/OPDES program by the regulated community by placing all applicable requirements in one chapter. This change was originally suggested by municipalities. There were no technical or fee changes included in this chapter. All provisions are equivalent to those contained in OAC 252:605 and OAC 252:648 proposed for revocation.
CONTACT PERSON:
Shellie Chard-McClary, Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma City, OK 73102, mailing address: P.O. Box 1677, Oklahoma City, OK 73101-1677, phone 405-702-8100, FAX 405-702-8101.

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 11, 2004:

SUBCHAPTER 1. INTRODUCTION

252:606-1-1. Purpose

(a) **Intent.** This Chapter sets the point source, biosolids (sewage sludge), and stormwater permitting standards for discharges to the waters of the State of Oklahoma from those facilities within the jurisdiction of the Oklahoma Department of Environmental Quality as specified in Title 27A O.S. § 1-3-101. This Chapter implements the Oklahoma Pollutant Discharge Elimination System Act, which begins at Title 27A O.S. § 2-6-201 of the Oklahoma Statutes. This Chapter applies to any person or entity that land applies biosolids or prepares it for firing in a biosolids (sewage sludge) incinerator, in addition to those facilities that discharge wastewater to water's of the state.

(b) **Other rules apply.** This Chapter applies in addition to other rules. This Chapter governs the effluent discharged from municipal wastewater treatment systems (constructed under OAC 252:656) and industrial wastewater treatment systems (constructed under OAC 252:616). The discharges regulated by this Chapter must not cause a violation of the Oklahoma Water Quality Standards (OAC 785:45).

(c) **Exclusion.** This Chapter does not apply to:

(1) discharges from marine toilets, as prohibited by Title 63 O.S. § 4213;

(2) discharges of dredge and fill material under the jurisdiction of the United States Corps of Engineers under Section 404 of the Federal Clean Water Act. Water in a treatment system is not waters of the State of Oklahoma;

(3) Septage. See OAC 252:645;

(4) Biosolids pilot studies that are conducted by a qualified research institute familiar with the crops and soils of this state for the beneficial use of biosolids through land application. Such studies are subject to conditions imposed by the DEQ, including:

(A) the limitation of the total amount of biosolids used must be no more than 25 dry tons for any one project or 50 dry tons for all pilot studies approved by the DEQ for the same institute in the same year;

(B) compliance with:

(i) The metal ceilings established in Table 1 of 40 CFR § 503.13(b);

(ii) One of the vector attraction reduction alternatives; and

(iii) The pathogen reduction requirements of 40 CFR § 503.32(a);

(C) written approval from the DEQ Executive Director or his designee prior to the commencement of operations;

(D) the period during which biosolids may be applied to the land is eighteen 18 months or less, unless extended by the DEQ;

(E) notification to the DEQ of the cessation of land application at the site; and

(F) periodic reporting.

(5) Biosolids co-fired in an incinerator with other wastes or for the incinerator in which biosolids and other wastes are co-fired are regulated under the appropriate Air Quality Rules. Other wastes do not include auxiliary fuel, as defined in 40 CFR § 503.41(b), fired in a sewage sludge incinerator.

(6) Sludge generated at an industrial facility during the treatment of industrial wastewater, including sludge generated during the treatment of industrial wastewater combined with domestic sewage.

(7) Use of biosolids determined to be hazardous in accordance with 40 CFR Part 261 which must be disposed of in a manner in accordance with the Oklahoma Hazardous Waste Management Act and rules promulgated thereunder;

(8) Ash generated during the firing of biosolids in a sewage sludge incinerator;

(9) Grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

(10) Biosolids with a concentration of PCBs equal to or greater than 10 milligrams per kilogram (10.0 mg\kg) of total solids (dry weight basis) may not be land applied under this Chapter. Disposal must be in accordance with OAC 252:515 ("Management of Solid Waste" rules) and applicable federal requirements under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*

252:606-1-2. Definitions

In addition to terms defined in Title 27A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, have the following meaning unless the context clearly indicates otherwise:

"Beneficial use" means the use of biosolids or wastewater through land application for the purpose of soil conditioning, or crop or vegetative fertilization, or erosion control, or the use of wastewater for dust suppression where fugitive dust control

would otherwise be an air quality problem, in a manner which does not pollute or tend to pollute the waters of the State of Oklahoma, environment or pose a risk to human health.

"Best professional judgment" or **"BPJ"** means the technical opinion developed by a permit drafter after consideration of all reasonably available and pertinent data or information which forms the basis for the terms and conditions of a discharge permit, and the use of sound engineering analysis of the industry, the nature and quantity of potential pollutants which may be produced and of the proposed treatment plant.

"Biosolids" means primarily organically treated wastewater materials from municipal wastewater treatment plants that are suitable for recycling as a soil amendment. This term is within the meaning of "sludge" referenced in 27A. O.S. § 2-6-101(11).

"Bypass" means the intentional or unintentional diversion of waste streams from any portion of a treatment, disposal or collection facility.

"Control tests" means chemical, physical or bacteriological tests, including visual observations made by or under the supervision of an operator to control plant performance, determine the quality of plant effluent and determine stream conditions.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Discharge point" means the point at which pollutants, wastewater or stormwater enters waters of the state or become waters of the state.

"Generator" or **"operator"** means authorized person under whose ownership or management authority, biosolids are used or disposed.

"Impoundment" or **"Surface impoundment"** have the same meaning used in OAC 252:616-1-2.

"Laboratory checks" means chemical, physical or bacteriological tests, including visual observations made on samples submitted by the operator or other authorized representatives to confirm the quality of the samples or to standardize plant control tests and procedures.

"Land application" means the application of biosolids onto a land surface; injection below land surface; or spreading biosolids onto land surface followed by incorporation into the soil. Land application does not include the disposal of biosolids in a municipal solid waste landfill permitted by the DEQ.

"Listed metal" means those metals listed in Tables I, II, and III of 40 CFR Part 503.13.

"Loading rate" means the amount (concentration or mass) of constituents or parameters applied to a unit area per application.

"Oklahoma Water Quality Standards" means the Oklahoma Water Resources Board rules (OAC 785:45) which classify waters of the state, designate beneficial uses for which the various waters of the state must be maintained and protected, and prescribe the water quality required to sustain designated uses.

"Operating records and reports" means the daily record of data connected with the operation of the system compiled in a monthly report on forms approved by the DEQ.

"Prior converted cropland" means those croplands as defined or used in the Federal Swampbuster Provisions located at Title 16, United States Code, §§ 3821 through 3823.

252:606-1-3. Adoption of U.S. EPA regulations by reference

(a) **Interpretation of rules.** Narrative provisions of this Chapter apply control over any provision of regulations of the Environmental Protection Agency (EPA) which are adopted by reference. The rules set forth in this Chapter are interpreted consistently with state compliance with the requirements of 40 CFR Part 123 (EPA Regulations on State NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.

(b) **Federal regulations adopted.** The following provisions of Title 40 of the Code of Federal Regulations (CFR) and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety:

(1) Part 116 (Hazardous Substances List)

(2) Part 117 (Reportable Quantities for Hazardous Substances)

(3) The following from PART 122 (NPDES PERMIT REGULATIONS):

(A) 122.1 (b)-(scope of NPDES permit requirements)

(B) 122.2 - (definitions)

(C) 122.3 - (exclusions)

(D) 122.4 - (prohibitions)

(E) 122.5 - (effect of permit)

(F) 122.6 - (continuation of expiring permits)

(G) 122.7 (b) and (c) - (confidential information)

(H) 122.21 - (application for a permit)

(I) 122.22 - (signatories)

(J) 122.24 - (concentrated aquatic animal production facilities)

(K) 122.25 - (aquaculture projects)

(L) 122.26 - (stormwater discharges)

(M) 122.27 - (silviculture)

(N) 122.28 (a) and (b) - (general permits)

(O) 122.29 - (new sources and new dischargers)

(P) 122.30 - What are the objectives of the storm water regulations for small MS4s?

(Q) 122.31 - As a tribe, what is my role under the NPDES storm water program?

(R) 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?

(S) 122.33 - If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?

(T) 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

(U) 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

(V) 122.36 - As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?
(W) 122.41 - (permit conditions)
(X) 122.42 - conditions for specified categories of permits)
(Y) 122.43 - establishing permit conditions)
(Z) 122.44 - (establishing permit limitations, standards and other conditions)
(AA) 122.45 - (calculating permit conditions)
(BB) 122.46 - (permit duration)
(CC) 122.47 (a) - (schedules of compliance)
(DD) 122.48 - (monitoring requirements)
(EE) 122.50 - (disposal into wells)
(FF) 122.61 - (permit transfer)
(GG) 122.62 - (permit modification)
(HH) 122.63 - (minor modifications of permits)
(II) 122.64 - (permit termination)
(JJ) Appendices A through I

(4) The following from PART 124 (Procedures for Decision making):
(A) 124.1 - (introduction)
(B) 124.2 - (definitions)
(C) 124.3 (a), (c), and (d)- (application for a permit)
(D) 124.5 (a),(c),(d) and (f) - (modification of permits)
(E) 124.6 (a),(c),(d) and (e) - (draft permit)
(F) 124.7 - (statement of basis of conditions where no fact sheet is adopted)
(G) 124.8 - (fact sheet)
(H) 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) - (public notice)
(I) 124.11 - (public comments and requests for hearings)
(J) 124.12 (a) and (c) - (public hearings)
(K) 124.13 - (obligation of protestors, etc., to raise all issues)
(L) 124.14 - (reopening)
(M) 124.15 - (issuance & effective dates of permits)
(N) 124.17 (a) and (c) - (response to comments)
(O) 124.51 (a) and (b) - (specific permitting procedures-purpose and scope)
(P) 124.52 - (permits required on a case-by-case basis)
(Q) 124.56 - (fact sheets)
(R) 124.57 (a) - (public notice)
(S) 124.59 - (comments from government agencies)
(T) 124.62 - (decision on variances)
(U) 124.66 - (thermal variance procedures)

(5) The following from PART 125 (criteria and standards for NPDES):
(A) Subpart A (technology-based treatment),
(B) B (criteria for aquaculture projects),
(C) D (fundamentally different factors),
(D) H (alternative effluent limitations),
(E) I (cooling water intakes),

(6) 40 CFR Part 129 (Toxic Pollutant Effluent Standards)
(7) 40 CFR Part 136 (testing and laboratory)
(8) 40 CFR §§ 401-471 (Effluent Guidelines and Standards)
(9) 40 CFR § 110.6 (notice of oil discharge) and
(10) 40 CFR Part 302 (Reportable Quantities and Notification).

(c) The following provisions of 40 CFR that are applicable to biosolids are hereby incorporated by reference, subject to any modifications and additional requirements specified in this Chapter:

(1) The following Sections from Part 503, Subpart A (General Provisions):
(A) 503.1 (Purpose and applicability)
(B) 503.2 (Compliance period)
(C) 503.3 (Permits and direct enforceability)
(D) 503.4 (Relationship to other regulations)
(E) 503.5 (Additional or more stringent requirements)
(F) 503.6(a)-(e),(g)-(j) (Exclusions)
(G) 503.7 (Requirement for a person who prepares biosolids)
(H) 503.8 (Sampling and analysis)
(I) 503.9 (General definitions)

(2) The following Sections from Part 503, Subpart B (Land Application):
(A) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
(B) 503.11 (Special definitions)
(C) 503.12 (General requirements)
(D) 503.13 (Pollutant limits)
(E) 503.14 (Management practices)
(F) 503.15 (Operational standards - pathogens and vector attraction reduction)
(G) 503.16(a) (Frequency of monitoring)
(H) 503.17(a) (Recordkeeping)
(I) 503.18 (Reporting)

(3) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
(A) 503.30 (Scope)
(B) 503.31 (Special definitions)
(C) 503.32(a), (b) (Pathogens)
(D) 503.33(a), (b)(1)-(11) (Vector attraction reduction)

(4) The following Sections from Part 503 Subpart E (Incineration)
(A) 503.40 (Applicability)
(B) 503.41 (Special definitions)
(C) 503.42 (General requirements)
(D) 503.43 (Pollutant (Metal) limits)
(E) 503.44 (Operational standard - total hydrocarbons)
(F) 503.45 (Management practices)
(G) 503.46 (Frequency of monitoring)
(H) 503.47 (Recordkeeping)
(I) 503.48 (Reporting)

(5) The following Appendices from Part 503:

(A) Appendix A (Procedure to determine the annual whole biosolids application rate for a biosolids)
(B) Appendix B (Pathogen treatment processes)

(d) **Exclusions.** Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

252:606-1-4. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, 2003.

252:606-1-5. Terminology in incorporated federal regulations

(a) As used in the incorporated federal regulations, unless the context clearly indicates otherwise:

(1) **"Administrator", "Regional Administrator"** and **"State Director"** are synonymous with Executive Director of the DEQ;

(2) **"Clean Water Act"** and **"CWA"** are synonymous with the Oklahoma Pollutant Discharge Elimination System Act, Title 27A § 2-6-201 and following;

(3) **"State"** is synonymous with DEQ.

(4) **"Evidentiary hearing"** is synonymous with administrative hearing.

(5) **"Public hearing"** is synonymous with public meeting.

(b) Federal statutes and regulations that are cited in federal regulations incorporated by reference herein may be used as guidance.

252:606-1-6. Spill reporting

(a) **Report.** The owner or operator of a facility or vessel must report to the DEQ any spill or discharge to the waters of the state on or from the facility or vessel according to 40 CFR Part 117. Reports to the DEQ may be telephoned to (800) 522-0206.

(b) **Response.** Whenever a spill or discharge occurs that is required by 40 CFR Part 117 and this rule to be reported to the DEQ, the owner or operator of the facility or vessel must immediately act to stop, contain, clean up and prevent recurrence of the spill or discharge.

SUBCHAPTER 3. DISCHARGE PERMITTING PROCESS FOR REGULAR INDIVIDUAL DISCHARGE PERMITS

252:606-3-1. Access and use

An applicant must acquire or possess a right to use and access the property on which discharge points, facilities, activities or discharge sources are located. The owner/operator must maintain such rights for the duration of the permit term, and provide documentary proof to the DEQ.

252:606-3-2. Discharge to storm sewer

Upon filing, any applicant proposing to discharge to a storm sewer must provide one copy of the application to the municipality having jurisdiction over such storm sewer.

252:606-3-3. Draft permit

(a) Appropriate reporting requirements, including a requirement that analyses reported for industrial discharges must be performed by laboratories certified by the DEQ and that analyses reported for municipal discharges must be performed by an operator certified by the DEQ, as specified in this Chapter.

(b) The DEQ may include in the draft permit statements of, or may incorporate by reference, any attachment to the permit which contains appropriate conditions, plans, limitations and other requirements relating to municipal lagoons, industrial surface impoundments, sludge management plans, or land application of sludge or wastewater associated with the discharging facility or activity and subject to the DEQ's jurisdiction and pursuant to DEQ rules and regulations.

252:606-3-4. Annual permit fee

All holders of a regular individual discharge permit must pay an annual permit fee over the life of the permit. Such fee must be due upon receipt of an invoice mailed by the DEQ annually. Upon payment of the annual fee, the DEQ must continue in effect the permit for one year but in no case past the expiration of such permit. Failure to pay such fee may result in suspension or termination of the permit. The fee schedules are in the appendices.

252:606-3-5. Permit termination

Requests by third parties for termination may be made subject to the provisions of 40 CFR § 124.5(a). If the Executive Director determines that the request is not justified, he or she will send the requester a brief written response giving a reason for the decision. Denials of requests are not subject to public notice, comment or hearings.

252:606-3-6. Compliance required

Applicants must comply with the terms of the permits that are issued. Permits may contain provisions more stringent than these rules in order to meet Oklahoma Water Quality Standards (OAC 785:45), the Implementation of Oklahoma's Water Quality Standards (OAC 785:46), the DEQ Water Quality Standards Implementation Plan (OAC 252:690), and the Water Quality Management Plan.

SUBCHAPTER 5. DISCHARGE PERMIT REQUIREMENTS

252:606-5-1. Terms and conditions of permits

(a) Terms and conditions of permits issued under this Chapter will include requirements necessary to assure compliance with the Oklahoma Water Quality Standards (OAC 785:45),

the Implementation of Oklahoma's Water Quality Standards (OAC 785:46), the DEQ Water Quality Standards Implementation Plan (OAC 252:690), and the Water Quality Management Plan.

(b) Where applicable, the DEQ may require municipalities to adopt and enforce appropriate requirements for dischargers to storm sewers to cause compliance with municipally-held stormwater discharge permits.

(c) Where practicable and as deemed appropriate by the Executive Director and as applicable in the circumstances, any discharge permit, or authorization to discharge issued by the Executive Director under a General Permit, may contain appropriate terms, conditions, limitations and requirements related to protection of groundwater, for remediation of pollution, or for implementation of other programs under the jurisdiction of the DEQ.

252:606-5-2. Technology-based methodologies

(a) Technology based methodologies include:

(1) **Industrial permits.** Effluent limitation guidelines for industry categories and pollutants are promulgated by the EPA pursuant to the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and Water Quality Act of 1987. EPA guidelines are adopted and incorporated by reference in OAC 252:606-1-5. If there are no industry category or pollutant guidelines applicable to the applicant's industry, BPJ of the permit writer applies.

(2) **Municipal permits.**

(A) Technology based limitations for municipal discharges are based upon the definition of "secondary treatment". The Oklahoma definition of "secondary treatment" is more stringent than the EPA definition under 40 CFR Part 133. Subparagraphs (B) through (G) of this paragraph contain the EPA approved definition of "secondary treatment" for the State of Oklahoma which is used in the development of wasteload allocations in the municipal point source inventory.

(B) For facilities discharging to perennial streams, "secondary treatment" is defined as:

(i) A monthly average of 30 mg/l BOD_5. A $CBOD_5$ of 25 mg/l is considered to be equivalent to a BOD_5 of 30 mg/l.

(ii) A weekly average of 45 mg/l BOD_5. A $CBOD_5$ of 40 mg/l is considered to be equivalent to a BOD_5 of 45 mg/l.

(iii) The monthly average percent removal for BOD_5 or $CBOD_5$ cannot be less than 85%.

(iv) A monthly average of 30 mg/l total suspended solids (TSS).

(v) A weekly average of 45 mg/l TSS.

(vi) The monthly average percent removal for TSS cannot be less than 85%.

(vii) The pH must be maintained between the limits of 6.5 and 9.0 standard units.

(C) For discharges to intermittent streams (those with 7-day, 2-year, low flow of zero) and for any discharge to a lake as defined in this subsection, secondary treatment is defined as:

(i) A monthly average of 20 mg/l BOD_5. A $CBOD_5$ of 18 mg/l is considered to be equivalent to a BOD_5 of 20 mg/l.

(ii) A weekly average of 30 mg/l BOD_5. A $CBOD_5$ of 25 mg/l is considered to be equivalent to a BOD_5 of 30 mg/l.

(iii) The monthly average percent removal for BOD_5 or $CBOD_5$ cannot be less than 85%.

(iv) A monthly average of 30 mg/l total suspended solids (TSS).

(v) A weekly average of 45 mg/l TSS.

(vi) The monthly average percent removal for TSS cannot be less than 85%.

(vii) The pH must be maintained between the limits of 6.5 and 9.0 standard units.

(D) For discharges where treatment is solely provided by lagoons, whether the discharge is to a perennial or an intermittent stream, secondary treatment is defined as:

(i) A monthly average of 30 mg/l BOD_5. A $CBOD_5$ of 25 mg/l is considered to be equivalent to a BOD_5 of 30 mg/l.

(ii) A weekly average of 45 mg/l BOD_5. A $CBOD_5$ of 40 mg/l is considered to be equivalent to a BOD_5 of 45 mg/l.

(iii) The monthly average percent removal for BOD_5 or CBOD5 cannot be less than 65%.

(iv) A monthly average of 90 mg/l total suspended solids (TSS).

(v) The pH must be maintained between the limits of 6.5 and 9.0 standard units.

(vi) This paragraph (D) does not apply to a discharge to a lake as defined in this subsection.

(E) For purposes of this Section, a discharge to a lake is any discharge from a point source which is either a direct discharge into a lake, or within five river miles upstream of the conservation pool of any lake.

(F) For purposes of this Section, a lake is an impoundment of the waters of the state which exceeds fifty acre-feet in volume which either:

(i) is owned or operated by a unit of government, or

(ii) appears in Oklahoma's Clean Lakes Inventory, or

(iii) is a privately-owned lake which has beneficial uses similar to those of publicly-owned or operated lakes.

(G) For purposes of this Section, percent removal is a percentage expression of the removal efficiency across a treatment plant for a given pollutant parameter, as determined from the monthly average values of the raw wastewater influent pollutant concentrations to the facility and the monthly average values of the effluent pollutant concentrations for a given time period.

(3) In the CWA Section 208 "Water Quality Management Plan for Oklahoma," Appendix B, the only specific wasteload allocation numbers assigned are those that apply to facilities showing a need for treatment greater than secondary (e.g., 10 mg/l BOD_5; 15 mg/l TSS; 2 mg/l NH_3-N). All other facilities receive an allocation of secondary.

(4) In the CWA Section 208 "Water Quality Management Plan for Oklahoma," Appendix B, determination of the actual effluent limits for a facility with an allocation of secondary can be accomplished by finding the stream class (perennial or intermittent) and the current treatment process (mechanical plant or lagoon, etc.). For example, an activated sludge facility (mechanical plant) which discharges into a perennial stream will have effluent limits of 30 mg/l BOD_5 and 30 mg/l total suspended solids (TSS) as found in paragraph (2) of this subsection.

(5) The Executive Director may establish in discharge permits limitations for coliform bacteria where:

(A) the proposed discharge is a "discharge to a lake" as defined in this Section, or

(B) the proposed discharge may otherwise adversely affect the beneficial uses of the waters of the state.

252:606-5-3. Water quality review

(a) The provisions of "Quality Criteria for Water, 1986", United States Environmental Protection Agency, EPA 440/5-86-001, as amended, are incorporated herein by reference and will be consulted where Oklahoma's Water Quality Standards do not contain a specific criterion on a particular pollutant and a criterion is necessary to protect a designated beneficial use.

(b) In all cases, where appropriate, to ensure that beneficial uses of receiving waters are protected or when deemed necessary to establish wasteload allocations of multiple dischargers along a stream segment, the DEQ will require the applicant to perform and submit to the DEQ, or the DEQ will perform, appropriate stream studies and water quality modeling.

252:606-5-4. Water quality standards variance

Approval for any variance allowed pursuant to the Oklahoma Water Quality Standards must be obtained directly from the Oklahoma Water Resources Board and the permittee or applicant must submit written evidence of the same to the DEQ in a timely manner.

252:606-5-5. Stormwater discharges

(a) **Prohibited without permit.** New and existing discharges of stormwater associated with industrial or construction activity to waters of the state are prohibited except as authorized by a regular individual OPDES permit or an authorization under an Oklahoma General Stormwater permit promulgated under this Chapter.

(b) **Maintenance of property.** All property must be maintained to prevent the discharge of stormwater runoff which would violate permit limitations or would cause a violation of Oklahoma's Water Quality Standards. Such maintenance includes containing the areas where raw and waste chemicals are stored, cleaning of trash and spills, and preventing the accumulation of wastes in discharge areas. Additional requirements will be as specified in any applicable individual or general permit and any required pollution prevention plan.

(c) **Permit conditions for regular individual permits.** In any regular individual permit authorizing the discharge of stormwater, the DEQ may include as conditions and limitations any condition or limitation or other requirement set forth in the "OPDES Stormwater Multi-Sector General Permit for Industrial Activities or the Stormwater General Permit for Construction Activities."

SUBCHAPTER 7. BIOSOLIDS PERMIT REQUIREMENTS

252:606-7-1. Permit required

Any person who intends to land apply biosolids or incinerate biosolids must obtain a permit.

252:606-7-2. Permit applications

All permit applications must be typed or computer printed and include:

(1) the name, address, and telephone number of the applicant or the applicant's authorized representative;

(2) name, mailing address, and telephone number of the generator or operator and the land applier, if different, and contact person from each source;

(3) a brief description of the biosolids including a list of the major commercial or industrial facilities that discharge to the municipal treatment system;

(4) a description of disposal practices and locations of any sites for transfer of the biosolids for treatment, land application, and/or disposal;

(5) laboratory test results of a representative soil sample from each proposed site in the permit application. The composite soil samples must be tested, and background levels set, for the metals listed in Tables 1 and 3 of 40 CFR § 503.13(b), pH, and the nutrients - nitrogen (N), ammonia (NH_4), nitrates (NO_3), potassium (K) and phosphorus (P).

(6) a list of environmental state or federal permits held by the applicant.

252:606-7-3. Certification required

When required by the DEQ, the operator must certify that the land application system has been designed according to OAC 252:656 and will be operated according to this Chapter.

252:606-7-4. Sludge (biosolids) management plan

A sludge management plan must be submitted with the permit application and include the following:

(1) a copy of the permit application;

(2) a breakdown of the anticipated types and volumes of biosolids generated;

(3) daily generation and annual production of semi-solids, solids as total volume and percent solids converted to dry tons;
(4) laboratory analysis including TCLP reports showing whether the biosolids are hazardous and the chemical and physical properties of biosolids to be land applied including concentrations of metals (listed and other), and any other pollutants;
(5) the amount of biosolids from each source expected to be used or disposed during each year of operation;
(6) a description of treatment methods including pathogen treatment and vector attraction reduction, including plant operational controls and recordkeeping forms that document biosolids treatment;
(7) identification of specific sites and identifying name for each;
(8) documentation of the applicant's right to use the site, including time restrictions, if any;
(9) land use descriptions of adjacent property;
(10) finding descriptions, legal descriptions, and latitude and longitude of each site;
(11) distance to nearest residence;
(12) topography of the site;
(13) soil types, permeability, infiltration and drainage patterns;
(14) proposed methods of field types, tillage, crop types and patterns, crop utilization, expected yield and final use of crop;
(15) irrigation practices, if any;
(16) depth to groundwater, including highest seasonal groundwater level, and any other data available;
(17) records of previous land application conducted at the site, including data on the cumulative metal loading;
(18) results of any sampling, analyses or monitoring previously performed by the applicant at the site, including metal and nutrient assessment, based on an annual and lifetime use;
(19) access controls;
(20) narrative description of buffer zones and other methods to be used to control surface drainage, stormwater runoff, and erosion at each site;
(21) information on how biosolids will be transported from the point of generation to the land application or disposal including transfer and storage information and a map showing the location of sources of the biosolids, proposed transportation routes, and the location of related containment, storage, and transfer facilities;
(22) equipment to be used;
(23) narrative description of proposed land application method and related details including depth and frequency of incorporation or injection;
(24) estimated application rate, frequencies, rest periods between applications, and estimated life of the site. Include calculations on which estimates are based for cumulative metal loading rates;
(25) emergency response plan describing the actions to be taken by the applicant including notice for corrective action and remediation associated with spills and releases;
(26) NRCS soil map of each specific site which shows soil classification, suitability, and soil profiles to a depth of sixty (60) inches;
(27) highway map which shows the location of each specific site to communities, cities, towns schools, highway access roads and airports;
(28) quadrangle topographic map or maps that is an original U.S.G.S. 7.5 minutes series (or 15 minute series if the 7.5 series has not yet been printed) with the following clearly marked:
(A) boundary of the site;
(B) public water supply sources and treatment facilities;
(C) pipelines and utility easements;
(D) oil or gas wells or drilling sites;
(E) wellhead delineation areas;
(F) groundwater flow direction;
(G) waters of the state with special emphasis for "scenic rivers";
(H) parks, recreation areas and any government owned land dedicated for special purposes (for example, wildlife refuges)
(I) identification of the 100-year flood plain or floodway if it affects the proposed site;
(J) any area inhabited by an endangered or threatened wildlife or plant species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c); and
(K) any additional information determined necessary by the DEQ.

252:606-7-5. Permit modifications

For all changes in permitted sites, methods of land application and treatment, the generator or operator must obtain a permit modification as required by 27A O.S. § 2-6-501(B).

252:606-7-6. Restrictions applicable to all land application

(a) **Storage time.** Except facilities permitted by the DEQ (excluding transfer stations), biosolids cannot be stored for greater than six (6) months without prior written approval from the DEQ and in no case longer than one (1) year.
(b) **Weather.** Do not land apply when the ground is frozen or saturated.
(c) **Endangered or threatened species.** Land application cannot occur if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c), or the critical habitat of such species.
(d) **Topography.** A land application site must have minimal slope or be contoured to prevent ponding and soil erosion. No application can occur on land having a slope exceeding five percent (5%) but less than ten percent (10%) unless erosion or runoff controls are implemented for liquid biosolids. Land having a slope greater than ten percent (10%) may be utilized for land application of dewatered and dried biosolids only with DEQ approval.

(e) **Off-site hauling.** A generator or operator must prevent biosolids and mud from a land application site from being carried off-site. If necessary, biosolids hauling vehicles must be cleaned prior to leaving the site and the rinse water disposed of in accordance with DEQ rules.

(f) **Manner.** Land apply sludge in a manner to prevent surface runoff and to control objectionable odors. Incorporate sludge into the soil before the end of each working day . Do not store or land apply, or allow to runoff, sludge or wastewater to wetlands or waters of the state. Discharges to waters of the state are prohibited without a discharge permit under OAC 252:606.

252:606-7-7. Laboratory analyses

All laboratory analyses required by this Chapter must be performed by laboratories certified by the DEQ.

252:606-7-8. Compliance required

All permittees must operate the land application site pursuant to the terms of the DEQ issued permit.

252:606-7-9. Monitoring wells

The DEQ may require monitor wells and boreholes in connection with the land application of biosolids. These wells must be designed, constructed and plugged in accordance with OAC 785:35.

SUBCHAPTER 9. LAND APPLICATION OF BIOSOLIDS

252:606-9-1. Prohibitions

Surface disposal under Part 503, Subpart C of 40 CFR, is specifically prohibited. This prohibition does not apply to disposal of biosolids in a municipal solid waste landfill that is permitted by the DEQ.

252:606-9-2. Land application exceptions and alternatives

(a) **Metal and selenium concentration limits.** Municipal biosolids that exceed the metal or selenium concentration limits set forth in 40 CFR, § 503.13(b)(1) (Table 1) cannot be land applied, but may be:

(1) incinerated at an incinerator permitted by the DEQ; or

(2) disposed at a solid waste landfill permitted by the DEQ for such waste disposal. Any biosolids disposed in a landfill must meet the pathogen and vector reduction requirements of this Subchapter.

(b) **Notification.** A land applier must notify the DEQ by telephone within 24-hours and follow up with a written report if the metal or selenium concentrations exceed those in 40 CFR § 503.13(b)(3) (Table 3) or risk the revocation of the land application permit.

252:606-9-3. Site use for land application

(a) **One applier.** A land application site must be used by only one land applier at a time unless the DEQ approves other users.

(b) **Subsequent use for land application.** The DEQ may approve a previously used land application site for subsequent land application.

(c) **Multiple sources.** A land applier who owns or operates more than one source facility or surface impoundment may utilize the same land application site for the application of biosolids from the multiple facilities or impoundments with prior written approval of the DEQ.

252:606-9-4. pH and nutrient limits

(a) **pH limits.** Any site with soil having a natural pH of less than 5.5 cannot be used for the land application of biosolids unless the soil pH is amended prior to application of biosolids. Documentation of soil amendment must be placed in the land applier's compliance records.

(b) **Phosphorus and nitrogen.** Annual biosolids land application rate cannot exceed nitrogen and phosphorus rates for the crop grown and cannot be applied in rates that result in phytotoxicity.

252:606-9-5. Soil sampling

(a) **Sample and analysis.** All background and annual soil sampling and analyses must be of a composite sample taken from an area 80 acres or less in size for each site proposed or used for the land application of biosolids. The DEQ may approve larger sampling areas on a case by case basis. Soil testing procedures applicable for use in the local area in accordance with Oklahoma State University soil testing guidance or the local NRCS may be used.

(b) **Operational soil monitoring.** A land applier must collect representative soil samples and have them analyzed as follows:

(1) For soil pH and the nutrients - nitrogen (N), ammonia (NH_4), nitrates (NO_3), potassium (K) and phosphorus (P) prior to the next annual application of biosolids;

(2) For metals in Table 3 of 40 CFR § 503.13(b) after every third year of use prior to the fourth year of use; and

(3) For all required background metals prior to the 4th year of biosolids application on each site.

SUBCHAPTER 11. TESTS AND REPORTS

252:606-11-1. Sample reporting terms

The following apply to all dischargers:

(1) Calculate Average Concentration (in mg/l or ug/l) as the sum of the sample concentrations taken (and analyzed) during the month divided by the number of samples analyzed. Report average concentrations on the SMR/DMR form if numerical limitations are given or reporting is required by the permit.

(2) Calculate Average Limitations as follows:

(A) "7-day average" or "weekly average", other than for bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. The "7-day average" for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.

(B) "30-day average" or "monthly average", other than for bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. The "30-day average" for bacteria is the geometric mean of the values for all effluent samples collected during a calendar month.

(3) The Daily Average Concentration means the arithmetic mean (weighted by flow value) of all the daily determinations of concentration made during a calendar month. Daily determinations of concentration made using a composite sample must be the concentration of the composite sample. When grab samples are used, the daily determination of concentration must be the arithmetic mean (weighted by flow value) of all the samples collected during that calendar day.

(4) The numerical limitations listed under Maximum Allowable Concentration (in mg/l or ug/l) represent the highest level of the pollutant which is allowed to be discharged to a receiving water under any flow conditions of the effluent. The permittee must report the highest single concentration for all samples analyzed during the month on the SMR/DMR form if numerical limitations are given or reporting is required by the permit.

(5) The Daily Maximum Concentration means the highest daily determination of concentration for any calendar day.

(6) Determine the Daily Average Discharge by calculating the total discharge by weight during a calendar month divided by the number of days of operation in the month. Where less than daily sampling is required by the permit, the daily average discharge must be determined by the summation of all the measured daily discharges by weight divided by the number of days during the calendar month when the measurements were made.

(7) The Daily Maximum Discharge means the total discharge by weight during any calendar day.

(8) The loading (in lbs/day) is calculated by multiplying each sample concentration (in mg/l) by the simultaneous effluent flow rate (in mgd) with a conversion factor of 8.34 stated in the equation: Loading (in lb/day) = Concentration (in mg/l) x Simultaneous Effluent Flow Rate (in mgd) x 8.34.

(9) Determine the Average Loading by the sum of all the loadings divided by the number of loadings calculated.

(10) The Maximum Loading is reported as the highest single loading for all samples analyzed during the month.

252:606-11-2. Laboratory analyses and reporting

(a) **Certified laboratories.** Analytical results provided to the DEQ must be from laboratories certified by the DEQ for the parameters reported, and be analyzed according to approved procedures (OAC 252:300, Laboratory Accreditation). Laboratories at municipal wastewater treatment plants must have operators certified under OAC 252:710.

(b) **Sample collection.** Collect samples during normal operation and representative of the discharge, according to 40 CFR § 136.3 Table II (containers, preservation and holding times).

(1) A grab sample must consist of one sample collected in less than a 15-minute period.

(2) A composite sample must consist of at least three discrete samples of equal volume taken at equal time intervals over the composite period, or taken proportional to flow rate, and combined into one. 24-hour composite samples must contain at least 12 discrete samples. The number of discrete samples must be increased where the wastewater loading is highly variable.

(3) Continuous or totalized samples must be continuously and automatically taken or recorded.

(c) **Flow measurement.** Determine the volume of flow at the time of sample collection and report it with the analytical results. Measurement devices and methods must be installed, calibrated and maintained to measure flows within 10% of true discharge rates. Records of pump running times and rates, if accurate, may be used to calculate total daily flow.

(d) **DMR reports.** Mail DMR forms (DEQ-approved discharge monitoring report form; see 40 CFR § 122.41(L)(4)(i)) to the Water Quality Division at the frequency required in the permit. Report daily average and maximum flow rates in MGD unless the permit specifies otherwise.

252:606-11-3. Municipal laboratories

(a) The provisions of this Section are minimum requirements.

(b) Results of all control tests must be made available to plant operators in a timely fashion for use in operational control of the facility.

(c) All plants must determine the daily flow and enter it in the operating records at the frequency specified in the permit. Flow measurements are also necessary when composite samples are collected. For plants not equipped with continuous flow recorders, occasional determinations of the flow over a 24-hour period will be necessary to establish a flow pattern so that occasional flow measurements will provide an indication of the total flow.

(d) Minimum control tests are tabulated in Appendix A of this Chapter, entitled, "Minimum Control Tests for Municipal Wastewater Treatment Facilities." In addition to these tests, routine observations, tests or measurements as to the quantity and quality of screenings, grit, sludge pumped from clarifiers, sludge drawn to drying beds or other means of disposal, the weather conditions must be entered in the operating records. The Executive Director may require that all effluent samples be collected from the outfall pipe at the point of discharge where

conditions are such that the effluent quality will likely be different at this point than it is in the final treatment or storage unit.

(e) Stream monitoring requirements must be as set forth in this subsection and as specified in any applicable permit or order of the Executive Director. These requirements are established in order to determine compliance with applicable standards. Unless otherwise specified in the permit, collect stream samples above and below the point of wastewater discharge with consideration being given to ease of access, mixing of plant effluent and the receiving stream, and the oxygen "sag" point of the receiving stream.

(1) Determine dissolved oxygen, temperature, pH, and stream appearance twice per month at least two weeks apart, but not more often than required in the permit for effluent sampling for BOD_5.

(2) Test for coliform bacteria twice per month at least two (2) weeks apart, but not more often than required in the permit for effluent sampling for coliform, if the permit for discharge contains coliform limits.

(3) The DEQ may require additional tests when problems develop in plant operation, or as necessary to determine compliance with the purposes and objectives of this Chapter.

(f) The Executive Director may grant variances from the requirements in this Section upon a written request and a showing by the permittee that the requested variance will:

(1) Not adversely affect the quality of the discharge nor the environment;

(2) Avoid an excessive requirement; and

(3) Not hinder the proper operations of the treatment facility.

252:606-11-4. Municipal operating records

(a) **Operating records.** Keep a daily record of the control tests required in OAC 252:606-7-31 on forms prepared or approved by the DEQ. Make entries for the date samples are collected and indicate where and by whom the observations were made. If monitoring beyond the minimum requirements, include the results of all analyses on the monthly report and use them to calculate weekly or monthly averages. For each required measurement or sample, record:

(1) The date, exact place and time of sample and indicate whether a grab sample or composite.

(2) The dates the analyses were performed.

(3) The laboratory and name of the operator who performed each analysis.

(4) The analytical techniques or methods used.

(5) The results of all analyses.

(6) The instantaneous flow at the time of grab sample collection or a record of each flow taken while collecting a composite sample.

(7) The method of composite sample calculations and other calculations.

(b) **Maintain records.** The facility owner must keep records of all laboratory checks and control tests, a copy of the monthly operational report and all laboratory work sheets at least three (3) years. These records must be available for inspection by DEQ personnel.

252:606-11-5. Industrial flow measuring and sampling

(a) If required by the DEQ, place a flow-measuring device to measure only the wastewater discharge.

(b) Provide easily accessible sampling points at the outfall of each treatment structure.

(c) Upon request by the DEQ, provide five (5) days prior notice to the DEQ of the next sampling schedule so that DEQ personnel may be present to observe and collect split samples.

SUBCHAPTER 13. CLOSURE AND REMEDIATION

252:606-13-1. Site closure and remediation

(a) **Closure.** A specific land application site may be closed as a land application site at any time by the land applier or by requirement of the DEQ.

(b) **Notice.** Prior to closure, a land applier must provide a written notice to the DEQ of the proposed closure.

(c) **Remediation plan.** When site-specific testing and monitoring indicates the presence of pollution or deterioration of a site, the DEQ will require a generator or operator to submit, receive approval of and perform a remediation plan.

APPENDIX A. MINIMUM CONTROL TESTS FOR MUNICIPAL WASTEWATER [NEW]

Appendix D is subdivided into seven (7) sections which address minimum control tests for specific treatment processes. A facility must perform the minimum control tests for all processes which it utilizes. For example, a trickling filter facility which has an anaerobic digester must comply with Tables 1-2, 1-5 and 1-6. Section 252:606-7-31 contains stream monitoring requirements. All facilities which discharge must perform these tests.

The following abbreviations, definitions and notations are used in Appendix D.

D.O. -Dissolved Oxygen
BOD_5 -Five day biochemical oxygen demand
TSS -Total Suspended Solids
SAR -Sodium absorption ratio
2/wk -Two times each week
3/wk -Three times each week
5/wk -Five times each week
7/wk -Seven times each week
Daily-Each day

3 hr comp -A composite sample collected over a three hour period of time and consisting of three effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.

6 hr comp -A composite sample collected over a six hour period of time and consisting of six effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.

12 hr comp-A composite sample collected over a twelve hour period of time and consisting of twelve effluent portions collected no closer together than one hour and composited according to flow.

Grab sample -An individual sample collected in less than 15 minutes.

Sequential Batch Reactor (SBR) Composite Sample

SBR Sample-A minimum of three aliquots collected from the discharge of a reactor. The first aliquot must be collected no later than 1/4 time, the second approximately 1/2 time, and the third no earlier than 3/4 time from the initiation of a discharge

cycle to the stoppage of the discharge cycle. The three aliquots must consist of equal portions unless the rate of discharge from the reactor varies significantly during the cycle, in which case aliquots must be proportional to the measurement of the flow occurring at the time of their collection.

Single Composite SBR Sample-One SBR sample collected from each reactor during one discharge cycle and composited proportional to the volume discharged from each of the reactors. The sample from at least one of the reactors must represent the expected period of peak influent organic loading.

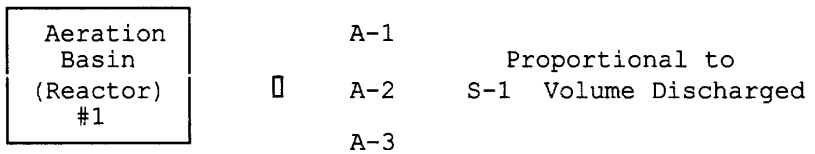
Two-Cycle Composite SBR Sample-One SBR sample collected from two consecutive discharge cycles of each reactor and composited proportional to the volume discharged during each cycle of each reactor. The sample from at least one cycle must represent the expected period of peak influent organic loading.

Three-Cycle Composite SBR Sample-One SBR sample collected from three consecutive discharge cycles of each reactor and composited proportional to the volume discharged during each cycle of each reactor. The sample from at least one cycle must represent the expected period of peak influent organic loading.

Example of a Single Composite SBR Sample

(Two-cycle and three-cycle composited SBR samples are multiples of these composited proportional to the volume discharged in each cycle).

[This example assumes an SBR plant with three reactors.]



```
 Aeration                A-1
  Basin                            Proportional to
(Reactor)        ▯       A-2     S-2     Volume Discharged      CS
   #2
                         A-3


 Aeration                A-1
  Basin                            Proportional to
(Reactor)        ▯       A-2     S-3  Volume Discharged
   #3
                         A-3
```

A-1 = 1st Aliquot
A-2 = 2nd Aliquot
A-3 = 3rd Aliquot

(A-1) + (A-2) + (A-3) = S-_

S-1 = SBR Sample from Reactor #1
S-2 = SBR Sample from Reactor #2
S-3 = SBR Sample from Reactor #3

(S-1) + (S-2) + (S-3) = CS

CS = Single Composite SBR Sample

Depending on design flow, single, two-cycle, or three-cycle SBR Composite Sample results are used for reporting purposes on discharge monitoring reports.

TABLE 1-1 Discharging Lagoons [NEW]

Parameters & Sample Site	Design Capacity (mgd) 0 - <0.1	.1 -<0.5	0.5-<1.0	1.0-<5.0	5.0-<10.0	>10.0
pH-each cell & effluent	2/wk	2/wk	2/wk	2/wk	2/wk	2/wk
D.O.-each cell & effluent	2/wk	2/wk	2/wk	2/wk	2/wk	2/wk
Alkalinity-each Cell & effluent	2/wk	2/wk	2/wk	2/wk	2/wk	2/wk
Temperature-each Cell & effluent	2/wk	2/wk	2/wk	2/wk	2/wk	2/wk
Flow-effluent	2/wk Instan -taneous	5/wk Instan -taneous	7/wk Totalized	7/wk Totalized	7/wk Totalized	7/wk Totalized
BOD_5-influent & effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
TSS-effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
Appearance of effluent	2/wk	2/wk	2/wk	2/wk	2/wk	2/wk

TABLE 1-2 Trickling Filter Plants [NEW]

Parameters & Sample Site	Design Capacity (mgd) 0 - <0.10	.1 - <0.5	0.5-<1.0	1.0-<5.0	5.0-<10.0	>10.0
pH-each influent & effluent	Daily	Daily	Daily	Daily	Daily	Daily
D.O.-effluent	Daily	Daily	Daily	Daily	Daily	Daily
Temperature-effluent	Daily	Daily	Daily	Daily	Daily	Daily
Settlement Solids-influent	Daily	Daily	Daily	Daily	Daily	Daily
Flow	Daily	Daily	Daily	Daily	Daily	Daily
BOD_5-influent & effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
TSS-influent & effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
Chlorine Residual (only if Cl is added as part of treatment)	Daily	Daily	Daily	Daily	Daily	Daily

TABLE 1-3 Activated Sludge Facilities (including extended aeration and oxidation ditches and including sequential batch reactors) [NEW]

Parameters & Sample Site	Design Capacity (mgd) 0 - <0.10	.1 - <0.5	0.5-<1.0	1.0-<5.0	5.0-<10.0	>10.0
pH influent & effluent	Daily	Daily	Daily	Daily	Daily	Daily
D.O.-effluent	Daily	Daily	Daily	Daily	Daily	Daily
Temperature-effluent	Daily	Daily	Daily	Daily	Daily	Daily
Settleable Solids-influent	Daily	Daily	Daily	Daily	Daily	Daily
Flow	Daily	Daily	Daily	Daily	Daily	Daily

BOD_5-influent & effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
TSS-influent & effluent	1/mo grab	2/mo grab	3/mo 3 hr comp	1/wk 6 hr comp	5/wk 12 hr comp	7/wk 12 hr comp
BOD_5 and TSS Effluent for SBR Process	1/mo single composite SBR Sample	2/mo single composite SBR sample	3/mo single composite SBR sample	1/wk 2-cycle composite SBR sample	5/wk 3-cycle compo -site SBR sample	7/wk 3-cycle compo -site SBR sample
Chlorine Residual (if Cl added as part of treatment)	Daily	Daily	Daily	Daily	Daily	Daily
30 minute Settleability-mixed liquor	Daily	Daily	Daily	Daily	Daily	Daily
Sludge Volume index	2/wk	2/wk	3/wk	3/wk	5/wk	7/wk
D.O.-aeration basins	2/wk	2/wk	3/wk	3/wk	5/wk	7/wk
Waste Activated Sludge Control Tests-select 1., 2., or 3. below- 1. Food/Mass 2. Mean Cell 3. Sludge age	as to	necessary control operation	3/wk	3/wk	3/wk	3/wk

TABLE 1-4 Aerobic Digestors [NEW]

Parameters & Sample Site	Design Capacity (mgd) 0 - <0.1	.1 - <0.5	0.5-<1.0	1.0-<5.0	5.0-<10.0	>10.0
D.O.-basin contents	2/wk	2/wk	3/wk	5/wk	7/wk	7/wk
pH-basin contents	2/wk	2/wk	3/wk	5/wk	7/wk	7/wk
% Volatile suspended solids destruction	None	None	None	None	3/wk	3/wk
% Solids	None	None	None	when drawn	when drawn	when drawn

TABLE 1-5 Anaerobic Digestors [NEW]

Parameters & Sample Site	Design Capacity (mgd) 0 - <0.10	.1 - <0.5	0.5-<1.0	1.0-<5.0	5.0-<10.0	>10.0
pH	1/wk	1/wk	3/wk	5/wk	7/wk	7/wk
Temperature	1/wk	1/wk	3/wk	5/wk	7/wk	7/wk
Volatile Acids	when drawn	when drawn	2/wk	3/wk	3/wk	3/wk
Total Alkalinity	when drawn	when drawn	2/wk	3/wk	3/wk	3/wk
% Volatile suspended solids	None	None	None	None	3/wk	3/wk
% Solids	None	None	None	when drawn	when drawn	when drawn

APPENDIX B. FEES FOR NON-INDUSTRIAL DISCHARGE PERMITS [NEW]

Annual Fee Rating System - Fees for non-industrial discharge permits will be calculated according to an Annual Fee Rating System as follows:

(1) The system will contain the following factors to evaluate the complexity of the permit:

(a) Discharge complexity level designation

(b) Major/minor facility designation

(c) Actual wastewater flow rate over the previous twelve (12) months

(d) Outfalls

(e) Pretreatment Program.

(2) Points will be calculated for each of the complexity factors listed in paragraph (1) according to the Instructions for completing the annual permit fee rating sheet (Table G-1) and the annual fee rating work sheet (Table G-2).

(3) The total annual fee is calculated by adding the annual discharge fee and the annual pretreatment fee. The annual discharge fee will be calculated by multiplying the total number of points generated using **Table B-2 items 1-4** by $27. The annual pretreatment fee will be calculated by multiplying the total number of points generated using **Table B-2 item 5** by $26.35.

(4) Fees for other disposal methods will be in addition to the fees for discharge and will be in accordance with other applicable rules of the Department.

(5) The annual fee will be paid in advance by all facilities which have a permit in effect as of June 30 of each year. Fees in excess of $1,000 may be paid quarterly upon the request of the permittee.

(6) The first year fee for new facilities will be calculated according to the Annual Fee Rating System. Complexity factors based on operational levels at the facility will be calculated using levels proposed in the application. The first year fee for new facilities will be prorated and will cover the period beginning the issuance date of the permit and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant with the permit and will be due within 20 days of receipt.

(7) A statement of fees due will be mailed to the permittee at the beginning of each fiscal year (July 1).

(8) Fees not received by the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.

(9) If the fees have not been received by the Department within fifteen (15) days after the due date set forth in the statement, the permit will be subject to revocation after notice and opportunity for hearing.

(10) Fee payment must be made by check, draft, money order payable to the Oklahoma Department of Environmental Quality and mailed or hand delivered to the Department's offices.

(11) State appropriations and federal grants will be used to offset the annual fee where possible.

(12) The dollar value per point in paragraph (3) above will continue in effect unless a workload and budget analysis is performed in the previous fiscal year justifying that a fee increase is necessary. This analysis must be reviewed and approved by the Environmental Quality Board.

TABLE B-1 INSTRUCTIONS FOR COMPLETING NON-INDUSTRIAL DISCHARGE PERMIT ANNUAL FEE RATING WORK SHEET [NEW]
(For Staff Use)

1. **DISCHARGE COMPLEXITY LEVEL DESIGNATION**

From the permit application and permit, determine the appropriate Standard Industrial Classification (SIC) codes for each discharge point by determining the processes and products reported for the facility for sewage treatment plants (SIC 4952), check complexity designation level 1. For other non-industrial discharges, use the latest available edition of Table 1 or 2 from the U.S. Environmental Protection Agency NPDES Permit Rating Worksheet "Complexity Groups for SIC Codes" to determine the applicable subcategory and the related complexity designation. When more than one category applies to effluent from a single discharge point, select the category with the highest complexity level designation. Level 1 is the lowest complexity level designation and Level 5 is the highest.

2. **MAJOR/MINOR NPDES FACILITY DESIGNATION**

Determine if the facility is rated as a major facility according to the latest EPA NPDES Permit Rating System. Check the appropriate answer and record the applicable point amount.

3. **WASTEWATER FLOW**

On the work sheet under the wastewater flow, indicate the appropriate flow range, based on actual flow rate from the previous twelve (12) months.

4. **OUTFALLS**

On the work sheet under outfalls, indicate the number of outfalls.

5. **PRETREATMENT**

On the work sheet under pretreatment, indicate whether the applicant implements a DEQ-required/approved pretreatment program.

6. **RATING POINTS FOR DISCHARGE**

Sum the rating points assigned to each of the four sections and record the total in the discharge rating points blank.

7. **DISCHARGE FEE**

Multiply the points for discharge by the appropriate $/point as found in section (3) above.

8. **RATING POINTS FOR PRETREATMENT**

Sum the rating points assigned to the two pretreatment sections and record the total in the pretreatment rating points blank.

9. **PRETREATMENT FEE**

Multiply the points for pretreatment by the appropriate $/point as found in section (3) above.

10. **ANNUAL PERMIT FEE**

The annual permit fee will be computed by adding the fee for discharge and the fee for pretreatment.

TABLE B-2. DISCHARGE PERMIT ANNUAL FEE RATING WORK SHEET [NEW]

PERMIT NO._____

PERMITTEE_____DATE___/___/___

DISCHARGE FEE CALCULATION

1. DISCHARGE COMPLEXITY DESIGNATION

SELECTED OUTFALL POINT #_____ (with the highest complexity)

SELECTED SIC CODE _____

Complexity Designation Level =
_____ 1 (20 points)
_____ 2 (25 points)
_____ 3 (30 points)
_____ 4 (35 points)
_____ 5 (40 points)

DISCHARGE COMPLEXITY DESIGNATION POINTS_____

2. MAJOR/MINOR NPDES FACILITY DESIGNATION

Is the facility rated as a major facility according to the latest version of the EPA NPDES Permit Rating System?

_____Yes, then points = 120
_____No, then points = 12

MAJOR/MINOR FACILITY DESIGNATION POINTS_____

3. WASTEWATER FLOW

FLOW VOLUME_____ (4 point per mgd)

Total points _____

4. OUTFALLS

Number of Outfalls _____ (8 points per outfall over 1, up to 10 outfalls)

Total points _____

5. PRETREATMENT

Does the facility implement a pretreatment program (charged one per city/authority)?

_____Yes, then points = 80 points + 20 points per mgd X 1/3 (Flow volume (sum of flow rates of all facilities operated by the city/authority) _____
+ 20 points per categorical user (with a cap of 10) x 2/3

_____No, then points = 0 points

Totals points _____
==========

(A) TOTAL RATING POINTS FROM DISCHARGE CALCULATIONS

(B) $/POINT FROM SECTION (3) ABOVE

(C) **DISCHARGE FEE** = ((A) x (B))

(D) TOTAL RATING POINTS FROM PRETREATMENT CALCULATIONS

(E) $/POINT FROM SECTION (3) ABOVE

(F) **PRETREATMENT FEE** = ((D) X (E))

(G) **TOTAL FEE** = ((C) + (F))

APPENDIX C. ANIMAL INDUSTRIAL DISCHARGE PERMIT FEES [NEW]

Annual Fee Rating System - Fees for industrial discharge permits will be calculated according to an Annual Fee Rating System as follows:

(1) The system will contain the following factors to evaluate the complexity of the permit:

(a) Major/minor facility designation

(b) Discharge complexity level designation

(c) Receiving stream beneficial use designation

(d) Toxic pollutant potential

(e) Traditional pollutant loading

(f) Additional factors

(2) Points will be calculated for each of the complexity factors listed in paragraph (1) according to the instructions for completing annual permit fee rating sheet in Table C-1 and the annual fee rating worksheet (in substantially same form as Table C-2).

(3) The annual fee will be calculated by multiplying the number of points by $41.00, provided that the minimum fee will be $100.00 per year and the maximum fee will be $15,000.00 per year.

(4) Fees for other disposal methods will be in addition to the fees for discharge and will be in accordance with other applicable rules of the Department.

(5) The annual fee will be paid in advance by all facilities which have a permit in effect as of June 30 of each year.

(6) The first year fee for new facilities will be calculated according to the Annual Fee Rating System. Complexity factors based on operational levels at the facility will be calculated using levels proposed in the application. The first year fee for new facilities will be prorated and covers the period beginning the issuance date of the permit and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant within 10 days of receipt of application and will be due within 20 days of receipt of application.

(7) A statement of fees due will be mailed to the permittee on or as soon as practical after July 1 of each year.

(8) State appropriations and federal grants will be used to offset the annual fee where possible.

(9) The dollar value per point in paragraph (3) above will continue in effect unless a workload and budget analysis is performed in the previous fiscal year justifying that a fee increase is necessary. This analysis must be reviewed and approved by the Environmental Quality Board.

TABLE C-1 INSTRUCTIONS FOR COMPLETING INDUSTRIAL DISCHARGE PERMIT ANNUAL FEE RATING WORKSHEET [NEW]
(For Staff Use)

1. MAJOR/MINOR FACILITY DESIGNATION

Determine if the facility is rated as a major facility according to the latest EPA NPDES Non-Municipal Permit Rating System. Check the appropriate answer and record $300 for a minor and $3000 for a major in the base fee blank.

2. DISCHARGE COMPLEXITY LEVEL DESIGNATION

From the permit application and permit, determine the appropriate Standard Industrial Classification (SIC) codes for each discharge point by determining the processes and products reported for the industry. Use the latest available edition of Table 1 or 2 from the U.S. Environmental Protection Agency NPDES Permit Rating Worksheet "Complexity Groups for SIC Codes" to determine the applicable Industrial Subcategory and the related complexity designation. When more than one category applies to effluents from a single discharge point, select the category with the highest complexity level designation. Level I is the lowest complexity level designation and Level VI is the highest. If a facility is covered by SIC code 9999 (unclassifiable establishments), a Complexity Designation Level will be assigned as follows:

A. If the facility is designated as major by the Environmental Protection Agency, check Category V.

B. If the facility is designated as minor by the Environmental Protection Agency, check Category II.

Record the applicable SIC code on the worksheet, then enter the highest complexity designation among all discharge points.

3. RECEIVING STREAM BENEFICIAL USE DESIGNATION

Review the permit application to determine the name of the receiving stream for each discharge point. Review the current Oklahoma Water Quality Standards and determine the beneficial use designations for the stream. Mark the beneficial use(s) on the Worksheet and add the corresponding point amounts. If there is more than one receiving stream, calculate the beneficial use points for each and record the highest total.

4. TOXIC POLLUTANT POTENTIAL

From the permit application and permit, determine the Standard Industrial Classification (SIC) codes for each discharge point by determining the processes and products reported for the industry. Use the primary SIC to determine if there are industrial subcategories for that SIC code. Use the latest edition of the U.S. Environmental Protection Agency NPDES Permit Rating Work Sheet to determine the applicable toxicity group. Use the Code of Federal Regulations (CFR) part and sub-part numbers to help identify the appropriate subcategory. If there is more than one applicable subcategory, select the subcategory that has the highest toxicity group. Enter the industrial subcategory number on the work sheet and check the appropriate Total toxicity potential number. Note that regardless of the facility's SIC code, if the facility discharges no process waste stream to a receiving water, the points scored are 0. Enter and record the applicable point amount.

5. TRADITIONAL POLLUTANT LOADING

Determine if the permit contains discharge limitations for biochemical oxygen demand (BOD), chemical oxygen demand (COD), total suspended solids (TSS) and/or ammonia (or nitrogen). Points should be assigned for the parameters limited in the permit. For the purposes of determining permit fees, the daily average load for each parameter will be

calculated, based upon the reported values for the parameter and flow rates submitted on self monitoring report (SMR) and/or discharge monitoring report (DMR) forms for the past twelve (12) months.

Calculate the BOD and/or COD daily average loads and record the applicable points for each. In some cases, oxygen demand may be limited by some parameter other then BOD or COD [i.e., ultimate oxygen demand (UOD), total organic carbon (TOC), or total oxygen demand (TOD)]. In such cases, record the alternate parameter in the applicable space and calculate the average load and report the applicable point amount.

Sum the points for each parameter and record the total traditional pollutant points in the space provided.

7. ADDITIONAL FACTORS

Determine if the permitted effluent limitations were assigned based on dissolved oxygen (DO) wasteload allocation modeling, including but not limited to the DO Desktop Model, for the receiving perennial stream. Check the appropriate answer and record the points required.

Determine if any permitted effluent limitations were assigned based on a wasteload allocation modeling for conservative parameters. Check the appropriate answer and record the points required.

Determine if biomonitoring is required for any discharge point listed on the permit. Check the appropriate answer and record the points required.

Determine if the facility has had whole effluent toxicity studies performed within the last two years. If so, determine if the results of any of those tests indicated that the effluent from this facility is/was toxic at the critical low-flow dilution. Check the appropriate answer and record the points required.

Determine if the facility is currently required by the U.S. Environmental Protection Agency or the Board to implement a Toxicity Identification Evaluation (TIE) or Toxicity Reduction Evaluation (TRE). Check the appropriate answer and record the points required.

8. TOTAL RATING POINTS

Sum the rating points assigned to each of the five sections and record the total in the total rating points blank.

9. ANNUAL PERMIT FEE

The annual permit fee will be computed by multiplying the rating factor (in $ per point) by the calculated total rating points plus the base fee rate.

TABLE C-2 INDUSTRIAL DISCHARGE PERMIT ANNUAL FEE RATING WORKSHEET [NEW]

PERMIT NO._____

PERMITTEE_____DATE___/___/___

1. **MAJOR/MINOR DETERMINATION**

Is the facility rated as a major facility according to the latest version of the EPA NPDES Non-Municipal Permit Rating System?

_____Yes, then $3000 is the base fee
_____No, then $300 is the base fee

2. **DISCHARGE COMPLEXITY DESIGNATION**

SELECTED OUTFALL POINT #_____ (with the highest complexity)

SELECTED SIC CODE _____

Complexity Designation Level =
_____ I (0 points)
_____ II (10 points)
_____ III (20 points)
_____ IV (30 points)
_____ V (40 points)
_____ VI (20 points)

DISCHARGE COMPLEXITY DESIGNATION POINTS_____

3. **RECEIVING STREAM BENEFICIAL USE DESIGNATION**

Selected Discharge Point #_____ (with the highest points)

Beneficial Use Designations and their assigned points for the selected Receiving Stream:

_____(5 points) Public and Private Water Supply
_____(3 points) Emergency Public and Private Water Supply
_____(5 points) Fish and Wildlife Propagation/Warm Water Aquatic Community
_____(1 point) Fish and Wildlife Propagation/Habitat Limited Aquatic Community
_____(10 points) Fish and Wildlife Propagation/Cool Water Aquatic Community
_____(10 points) Fish and Wildlife Propagation/Trout Fisheries (put and take)
_____(1 point) Agriculture
_____(3 points) Agriculture/Class I Irrigation
_____(2 points) Agriculture/Class II Irrigation
_____(1 point) Agriculture/Class III Irrigation
_____(0 points) Hydroelectric Power
_____(1 point) Industrial and Municipal Process and Cooling Water
_____(5 points) Primary Body Contact Recreation
_____(1 point) Secondary Body Contact Recreation
_____(0 points) Navigation
_____(1 point) Aesthetics
_____(10 points) Limitation for Additional Protection

RECEIVING STREAM POINTS_____

4. TOXIC POLLUTANT POTENTIAL

Selected Outfall Point #_____ (with highest Total toxicity number)
Selected SIC Code _____
Selected Industrial Subcategory Code _____

Toxicity Groups	**Points**
No Process Waste Stream	0
_____ 1.	5
_____ 2.	10
_____ 3.	15
_____ 4.	20
_____ 5.	25
_____ 6.	30
_____ 7.	35
_____ 8.	40
_____ 9.	45
_____ 10.	50

TOXIC POLLUTANT POTENTIAL POINTS_____

5. TRADITIONAL POLLUTANTS

A. BOD or _____
Daily Average Load =

_____	< 50 lb/day	(0 points)
_____	50 - 500	(5 points)
_____	> 500 - 1000	(10 points)
_____	>1000 - 3000	(20 points)
_____	>3000 - 5000	(30 points)
_____	>5000 lb/day	(40 points)

BOD Points _____

B. COD or _____
Daily Average Load =

_____	< 100 lb/day	(0 points)
_____	100 - 500	(5 points)
_____	> 500 - 1000	(10 points)
_____	> 1000 - 5000	(20 points)
_____	> 5000 - 10000	(30 points)
_____	>10000 - lb/day	(40 points)

COD Points _____

C. TSS
Daily Average Load =

_____	< 100 lb/day	(0 points)
_____	100 - 500	(5 points)
_____	> 500 - 1000	(10 points)

_____> 1000 - 5000 (20 points)
_____> 5000 - 10000 (30 points)
_____>10000 lb/day (40 points)

TSS Points _____

D. AMMONIA or _____
Daily Average Load =
_____ < 200 lb/day (0 points)
_____ 200 - 500 (5 points)
_____ > 500 - 1000 (10 points)
_____ >1000 - 5000 (20 points)
_____ >5000 - 10000 (30 points)
_____ >10000 lb/day (40 points)

AMMONIA (or nitrogen) Points _____

TOTAL POLLUTANT POINTS _____

6. ADDITIONAL FACTORS

Were any of the effluent limitations assigned to the discharge based on DO related wasteload allocation modeling for the receiving perennial stream?

_____ Yes, then points = 5
_____ No, then points = 0

Were any of the effluent limitations assigned to the discharge based on a wasteload allocation modeling for conservative parameters?

_____ Yes, then points = 5
_____ No, then points = 0

Is biomonitoring required for any discharge point listed on the permits?

_____Yes, then points = 10
_____No, then points = 0

Has any effluent from the facility shown toxicity at the critical low flow dilution on a whole effluent toxicity study within the last two calendar years?

_____Yes, then points = 25
_____No, then points = 0

Is the facility currently required by the U.S. Environmental Protection Agency or the Board to implement a Toxicity Identification Evaluation (TIE) or a Toxicity Reduction Evaluation (TRE).

_____Yes, then points = 100
_____No, then points = 0

ADDITIONAL FACTORS POINTS_____

==========

(A) BASE FEE $

(B) RATING FACTOR ($_____/point)

(C) TOTAL RATING POINTS_____

(D) TOTAL AMOUNT DUE (A) + ((B) X (C)) $

APPENDIX D. FEES FOR STORMWATER PERMITS AND OTHER GENERAL PERMITS [NEW]

(A) The fee for MS4 stormwater permits is $550.
(B) The fee for all general permits, including Authorizations under general stormwater is $254.21.
(C) The annual fee must be paid in advance by all facilities which have been authorized to discharge under a permit as of June 30 of each year.
(D) Fee payment must be made by check, draft, or money order payable to the Oklahoma Department of Environmental Quality and mailed or hand delivered to the Department's offices.
(E) The first year fee for facilities will be prorated and will cover the period beginning the issuance date of the authorization and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant within 10 days of receipt of application and will be due within 20 days of receipt of application.
(F) A statement of fees due will be mailed to the permittee at the beginning of each fiscal year (July 1).
(G) Fees not received by the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.
(H) If the fees have not been received by the Department within fifteen (15) days after the due date set forth in the statement, authorization to discharge under the permit will be subject to revocation after notice and opportunity for hearing.
(I) State appropriations and federal grants will be used to offset the annual fee where possible.
(J) The fees in paragraphs (A) and (B) above will continue in effect unless a workload and budget analysis is performed in the previous fiscal year justifying that a fee increase is necessary. This analysis must be reviewed and approved by the Environmental Quality Board.

APPENDIX E. FEES FOR INDIVIDUAL DISCHARGE PERMITS FOR CATEGORICAL INDUSTRIES [NEW]

(A) The fee for individual discharge permits for Categorical industries will be $730.

(B) Fee payment must be made by check, draft, or money order payable to the Oklahoma Department of Environmental Quality and mailed or hand delivered to the Department's offices.

(C) The annual fee must be paid in advance by all facilities which have a permit in effect as of June 30 of each year.

(D) The first year fee for facilities will be prorated and will cover the period beginning the issuance date of the permit and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant within 10 days of receipt of application and will be due within 20 days of receipt of application.

(E) A statement of fees due will be mailed to the permittee at the beginning of each fiscal year (July 1).

(F) Fees not received by the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.

(G) If the fees have not been received by the Department within fifteen (15) days after the due date set forth in the statement, the permit will be subject to revocation after notice and opportunity for hearing.

(H) State appropriations and federal grants will be used to offset the annual fee where possible.

(I) The fees in paragraph (A) above will continue in effect unless a workload and budget analysis is performed in the previous fiscal year justifying that a fee increase is necessary. This analysis must be reviewed and approved by the Environmental Quality Board.

APPENDIX F. FEES FOR LAND APPLICATION OF BIOSOLIDS [NEW]

(a) The annual permit fee is:
(1) Population Range 0-100 - $210
(2) Population Range 101-500 - $235
(3) Population Range 501-1,000 - $410
(4) Population Range 1,001-5,000 - $710
(5) Population Range 5,001+ - $810

(b) Fees are due upon receipt of an invoice mailed by the DEQ annually. Upon payment of the annual fee, the permit will continue in effect for one year but in no case past its expiration. Failure to pay the fee may result in the suspension or termination of the permit.

(c) Financial assurance

(1) If the applicant is not a city, town or other public entity, the applicant must submit the following information to the DEQ:

(A) Expected costs for operation and maintenance, replacement and closure;

(B) Continued existence and financial accountability; and that

(C) Assurance that provisions have been made for continued existence of the operating entity for the expected life of the facility.

(2) Continued existence may be demonstrated in one of the following fashions:

(A) The applicant may be a property owners association or a nonprofit corporation established under the laws of the State of Oklahoma. The association must have the legal authority to own and manage the land application system including the authority to set and collect fees from users for operation and maintenance of the system. The bylaws of the entity must contain a provision that dissolution cannot occur until the system is either closed in accordance with applicable DEQ rules or transferred to another viable operating entity. The instrument creating the association must be filed in the office of the county clerk where the property is located; or

(B) The applicant must provide proof of a sufficient amount on deposit to the credit of a trust, the powers of which are to operate and maintain the wastewater system for the expected life of the facility; or

(C) Other proof of financial viability, such as the issuance of a bond or insurance contract covering the operation and maintenance of the wastewater system for the life of the system may be submitted to DEQ for approval; and

(3) Costs for closure of the wastewater system as required by law must be included in any funding plan.

(4) If the information fails to demonstrate the on-going viability of the operation, the application will be denied.

[OAR Docket #04-833; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 616. INDUSTRIAL WASTEWATER SYSTEMS

[OAR Docket #04-834]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
Subchapter 1. Introduction
252:616-1-2. Definitions [AMENDED]
Subchapter 3. Permit Procedures
252:616-3-1. Requirement to obtain a permit [AMENDED]
Subchapter 5. General Standards
252:616-5-1. Site and system [AMENDED]
Subchapter 11. Land Application Standards
252:616-11-1. Restrictions [AMENDED]
AUTHORITY:
Environmental Quality Board and Water Quality Management Advisory Council powers and duties, 27A O.S. §§ 2-2-101 and 2-2-201, and the Oklahoma Pollution Discharge Elimination System Act, 27A O.S. § 2-6-201 *et seq.*
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None
ANALYSIS:
The purpose of the proposed amendment is to update the rules to the most recent citation of other DEQ rules, clarify the definition of "Beneficial Use" as requested by the Water Quality Management Advisory Council, and clarify the confusing format of the separation distance requirements. There are no technical changes to this chapter.
CONTACT PERSON:
Shellie Chard-McClary, Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma City, OK 73102, mailing address: P. O. Box 1677, Oklahoma City, OK 73101, phone 405-702-8100, FAX 405-702-8101.

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 11, 2004:

SUBCHAPTER 1. INTRODUCTION

252:616-1-2. Definitions

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

"Beneficial use" means in the context of land application the use of sludge or wastewater through land application for the purpose of soil conditioning, crop vegetative fertilization, or erosion control, or the use of wastewater for dust suppression where fugitive dust control would otherwise be an air quality problem, in a manner which does not pollute or tend to pollute waters of the state of Oklahoma, the environment or pose a risk to human health ~~or cause any deterioration of land surfaces, soils, surface waters or groundwater~~.

"Berm" means a man-made barrier designed to control waste and/or stormwater within a surface impoundment or to retard or contain runoff in a given area.

"Bypass" means the intentional or unintentional diversion of waste streams from any portion of a facility.

"Cathodic protection" means protecting a metal from electrochemical corrosion or rusting by using it as the cathode of a cell with a sacrificial anode.

"Cell" means a part of a surface impoundment system that shares a wall and berm with another impoundment area.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Engineer" means a professional engineer registered in the state of Oklahoma.

"Flexible membrane liner" means a manufactured liner material composed of plastics, resins or other flexible materials, which is designed and manufactured to be used to control the seepage or release of waste through the liner material.

"Flow-through surface impoundment" means a surface impoundment designed and constructed with an outfall structure which allows the controlled discharge of wastewater out of the impoundment.

"Freeboard" means the vertical distance from the surface water level to the overflow elevation (outfall structure or the lowest part of the surrounding berm) in a surface impoundment.

"Hydraulic conductivity" means the coefficient of proportionality that describes the rate at which a fluid can move through a permeable medium. It is a function of both the medium and of the fluid flowing through it; also defined as the quantity of water that will flow through a unit cross-sectional area of porous material per unit of time under a hydraulic gradient of 1.00 (measured at right angles to the direction of flow) at a specified temperature.

"Industrial wastewater treatment permit" shall include any permit for construction, operation, treatment, storage or disposal required under this Chapter.

"Land application" means the controlled application of treated industrial wastewater or sludge onto the land surface for beneficial use.

"Liner" means a barrier which is designed, constructed and installed in a surface impoundment and which has appropriate chemical and physical properties to ensure that such structures control the seepage or release of waste and wastewater from the impoundment.

"Monitoring well" means all borings, wells, piezometers, or other means of retrieving a soil, waste, wastewater or vapor sample from the subsurface.

"Oklahoma Water Quality Standards" means the rules promulgated by the Oklahoma Water Resources Board and contained in OAC 785:45 which classify waters of the state, designate beneficial uses for which the various waters of the State shall be maintained and protected, and prescribe the water quality standards required to sustain designated uses.

"Operator" means the person responsible for the maintenance and operation of a surface impoundment, or disposal or wastewater treatment system and responsible for keeping records and providing reports to the DEQ.

"Outfall" means the point where monitoring shall occur for the purpose of evaluating compliance with rules, permits or orders of the DEQ.

"Person" means any individual, company, corporation, government agency, municipality, or any other entity.

"Permeability" means the rate at which liquids pass through soil or other materials in a specified direction.

"Receiving water" means that portion of any waters of the State into which wastewater is or may be released, leached, or discharged.

"Sanitary wastewater" means and includes but is not limited to wastewater from drinking fountains, showers, toilets, lavatories, and kitchens.

"Surface impoundment" means a native soil or lined basin either below or above ground level which is designed, maintained and/or operated to store, recycle, treat and/or dispose of industrial wastewater or stormwater, and shall include but is not limited to lagoons, excavations, basins, diked areas, pits and ponds.

"Tank system" means any subsurface disposal system which involves the storage and treatment of wastewater.

"Total retention surface impoundment" means a surface impoundment designed and constructed without an outfall structure.

"Waste class" means the following classification of wastewater, including stormwater:

(A) Class I: containing or suspected to contain pollutants for which the toxicity, concentration and volume pose a significant risk of harm to humans, aquatic life, wildlife or the environment, either through high potential to migrate in groundwater or the likelihood, if discharged, to significantly degrade the beneficial uses of the receiving water as designated in the Oklahoma Water Quality Standards. These wastewaters require the most restrictive environmental protection measures.

(B) Class II: containing or suspected to contain pollutants for which the toxicity, concentration and volume pose a moderate risk of harm to humans, aquatic life, wildlife, or the environment, either through the potential to migrate in groundwater or a reasonable possibility, if discharged, to degrade the beneficial uses of the receiving water as designated in the Oklahoma Water Quality Standards.

(C) Class III: containing or suspected to contain pollutants which do not pose a substantial risk of harm to humans, aquatic life, wildlife, or the environment because of a relative immobility in groundwater or a general lack of direct toxicity, and which are not likely, if discharged, to degrade the beneficial uses of the receiving water as designated in the Oklahoma Water Quality Standards.

(D) Class IV: containing only sanitary wastewater from industrial facilities. Class IV wastewaters are not subject to this Chapter, but are governed by OAC 252:641 (under 5,000 gpd) or by OAC 252:656 (5,000 gpd or more).

(E) Class V: industrial wastewater not otherwise classified.

"Waste containment system" means storage tanks, containers and other storage reservoirs, transfer lines, pumps, fittings, overfill prevention devices, and any associated anti-corrosion measures and leak prevention or detection systems.

SUBCHAPTER 3. PERMIT PROCEDURES

252:616-3-1. Requirement to obtain a permit

Permits are required for the construction, installation, modification, operation and closure of any industrial wastewater system and are processed according to the Uniform Permitting Act, Title 27A § 2-14-101, and the Tier classifications listed in OAC ~~252:2-15-~~ 252:4-7. This Chapter contains the standards to be met. Industrial wastewater system requirements under this chapter may be issued as components of discharge permits issued under OAC ~~252:605~~ 252:606.

SUBCHAPTER 5. GENERAL STANDARDS

252:616-5-1. Site and system

(a) **Location and construction.** Locate and construct industrial wastewater systems in a manner which will minimize adverse impacts to waters of the State and the environment. Do not locate in floodways. If located in a flood plain, the crest elevation of dikes must be at least one foot above the 100-year flood elevation and the DEQ may require additional erosion controls.

(b) **Separation distances.** The following separation distances are required:

(1) Tank systems and surface impoundments must be separated at least 50 feet from private water wells (100 feet if the ground slopes towards the well) or surface water supplies, and 300 feet from public water supply wells. Separate tank systems by 5 feet and surface impoundments by 10 feet from property lines.

(2) Land application must not occur:

(~~1~~A) in designated wellhead delineation areas of private or public water supplies;

(~~2~~B) within one-half mile of an outstanding resource water or its tributaries or a high quality water

as identified in Appendix A of the Oklahoma Water Quality Standards;

(~~3~~C) within one-quarter mile of a water listed in Appendix B of the Oklahoma Water Quality Standards;

(~~4~~D) within 250 feet of a well used for a potable water supply or within 100 feet of any surface water of the state not otherwise referenced in (3) or (4) of this paragraph; or

(~~5~~E) within two feet of the highest measured groundwater elevation at the site.

(c) **Site security.** Restrict access to industrial wastewater systems and land application sites by fences, secured gates or other reasonable means. Post a sign listing the name of the facility operator, an emergency telephone number and the DEQ permit number.

(d) **Site protection.** Do not allow wastewater to escape, unless specifically authorized in the permit through lateral lines or through a discharge permit. Construct and maintain facilities to prevent contamination of the surrounding soil and ground water.

(e) **System protection.** Protect tank systems from vehicular traffic, and prevent vehicular traffic over lateral fields. Provide soil, gravel or splash pads to protect surface impoundment liners during routine operation and maintenance.

(f) **Purpose.** All industrial wastewater systems must be designed for a specific treatment purpose (such as settling, biological degradation, beneficial reuse or final disposal), and shall be maintained and operated to produce optimum treatment results.

(g) **Site specific.** The DEQ may impose specific construction, operation and maintenance requirements based on wastewater type and environmental compatibility, on a case-by-case basis.

SUBCHAPTER 11. LAND APPLICATION STANDARDS

252:616-11-1. Restrictions

(a) **Beneficial use.** No person may land apply sludge or wastewater except for the purpose of beneficial use.

(b) **Manner.** Land apply sludge and wastewater in a manner to prevent surface runoff and to control objectionable odors. Incorporate sludge into the soil before the end of each working day (material from impoundments that is recovered as product is exempt). Do not store or land apply, or allow to runoff, sludge or wastewater to wetlands or waters of the State. Discharges to waters of the State are prohibited without a discharge permit under OAC ~~252:605~~ 252:606.

(c) **Storage.** Store industrial sludge as specified in the MOP.

(d) **Endangered or threatened species.** Do not land apply if it is likely to adversely affect a threatened or endangered species listed under section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c), or the critical habitat of such species.

(e) **Topography.** A land application site shall have minimal slope or be contoured to prevent ponding and soil erosion. No application shall occur on land having a slope exceeding five percent (5%) unless erosion and runoff control provisions are implemented, except that land having a slope of ten percent (10%) or less. Land having a slope greater than ten percent (10%) may be utilized for land application only with Department approval. For land application for dust suppression on roadways, clean wastewater hauling vehicles prior to leaving the site with provisions for disposition of rinse water.

(f) **Waste classification.** Do not land apply Class I or II wastewaters.

[OAR Docket #04-834; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 641. INDIVIDUAL AND SMALL PUBLIC ON-SITE SEWAGE ~~DISPOSAL~~ TREATMENT SYSTEMS

[OAR Docket #04-835]

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RULES:
Subchapter 1. General Provisions
252:641-1-1 [AMENDED]
252:641-1-2 [AMENDED]
252:641-1-2.1 [AMENDED]
252:641-1-3 [AMENDED]
252:641-1-4 [AMENDED]
Subchapter 3. Soil Tests
252:641-3-1 [AMENDED]
252:641-3-2 [AMENDED]
252:641-3-4 [AMENDED]
Subchapter 5. Building~~,~~ and Collection ~~System and Other Solid Pipe~~ Systems
252:641-5-2 [AMENDED]
Subchapter 7. Septic Tanks
252:641-7-2 [AMENDED
252:641-7-4 [AMENDED]
Subchapter 9. Lift Stations and Dosing Tanks
252:641-9-1 [AMENDED]
252:641-9-2 [AMENDED]
252:641-9-3 [AMENDED]
252:641-9-4 [NEW]
Subchapter 11. ~~Absorption Fields~~ Subsurface Systems
252:641-11-1 [AMENDED]
252:641-11-2 [AMENDED]
252:641-11-3 [REVOKED]
252:641-11-4 [REVOKED]
Subchapter 13. Aerobic Systems
252:641-13-1 [AMENDED]
252:641-13-3 [REVOKED]
252:641-13-4 [AMENDED]
Subchapter 15. Lagoons
252:641-15-1 [AMENDED]
252:641-15-5 [AMENDED]
252:641-15-6 [AMENDED]
Subchapter 21. Certification for On-Site Sewage ~~Disposal~~ Treatment System Installers
252:641-21-1 [AMENDED]
252:641-21-2.1 [AMENDED]
252:641-21-3 [AMENDED]
252:641-21-8 [REVOKED]
252:641-21-12 [AMENDED]
252:641-21-13 [AMENDED]
Subchapter 22. Certification for Persons Who Perform Soil Profile Descriptions
252:641-22-1 [AMENDED]

252:641-22-3 [AMENDED]
252:641-22-4 [AMENDED]
252:641-22-6 [AMENDED]
Subchapter 23. Fees
252:641-23-1 [AMENDED]
252:641-23-2 [AMENDED]
252:641-23-3 [AMENDED]
Appendix A. Minimum Lot Size Requirements for On-Site Sewage Disposal Systems [REVOKED]
Appendix A. Minimum Lot Size Requirements for On-Site Sewage Disposal Systems [NEW]
Appendix B. Soil Groups [REVOKED]
Appendix B. Soil Groups [NEW]
Appendix C. Pipe Specifications for On-Site Sewage Disposal Systems [REVOKED]
Appendix C. Pipe Specifications for On-Site Sewage Disposal Systems [NEW]
Appendix D. Sampling Frequency & Testing Requirements for On-Site Surface Application of Treated Sewage [REVOKED]
Appendix D. Sampling Frequency & Testing Requirements for On-Site Surface Application of Treated Sewage [NEW]
Appendix E. Separation Distance Requirements for On-Site Sewage Disposal Systems [REVOKED]
Appendix E. Separation Distance Requirements for On-Site Sewage Disposal Systems [NEW]
Appendix F. Small Public Systems Sewage Flow [REVOKED]
Appendix F. Small Public Systems Sewage Flow [NEW]

AUTHORITY:
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None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:
There are seven main reasons for this proposed rulemaking. The first is to increase fees, which resulted in restructuring the fee schedule, to compensate for the recently cut state allocated dollars. This increase will help to ensure that the on-site programs will be able to continue to operate at their current level despite the budget cuts.

The second is to change the terminology throughout the Chapter from "disposal of sewage" to "treatment of sewage" to more accurately reflect our philosophy that sewage should be properly treated and not just disposed of.

The third is to add new requirements for performing percolation tests so that the percolation test can be used to assure that there is 6" of "good soil" below the system. Currently, the rules are allowing systems to be installed up to 6" deeper than percolation test holes, which is causing systems to fail due to poor soil conditions or groundwater.

The fourth is to require that a soil test be performed in areas where ET/A systems are installed in order to ensure that the ET/A system is the proper system for the soil type and to assure that groundwater is not within 6" of the bottom of the trench. The fifth is to require that certified soil profilers perform soil texturing exercises throughout the year and that they pass an annual texturing test so that DEQ can assure their continued competency.

The sixth is to allow installers to be certified in any combination of the following individual categories: subsurface systems, lagoons, and aerobic systems. Under the current classification system, installers have to first become certified in subsurface systems before upgrading to lagoons and then to aerobic systems.

The seventh is to require a dosing tank for aerobic systems through the alternative system process when the maximum daily flow exceeds the aerobic treatment unit's daily capacity so that sewage is properly treated before being land applied.

In a continuing effort to update these rules, this rulemaking also: makes the fencing requirements for small public lagoons consistent with 252:656 Water Pollution Control Facility Construction; adds the requirement that openings to aerobic systems be secured for public safety reasons; clarifies lagoon leakage test requirements to ensure that sewage is not allowed to seep through the bottom of lagoons; clarifies that the 50' separation distance for lagoons to buildings only applies to off-site residences; removes the reduction for sizing subsurface systems when water conservation devices are used to avoid organically overloading the system; updates the standards for plastic septic tanks; adds the requirement that the person performing the presoak for a soil percolation test sign the Report for On-Site Sewage Form attesting that they followed the presoak requirements; adds the requirement that all installers must have a $10,000 bond since, with the new classification system, an installer in any of the classes could install systems valued at $10,000 or more; adds provisions so that tribes and other governmental entities may meet the financial assurance requirements by providing documentation that the entity will pay for the repair of faulty or improperly installed systems; adds specifications for pressure pipe that were previously omitted; adds a new fee for the review of Alternative Systems permit applications; renames Subchapter 11 to apply to all subsurface systems and reorganizes Subchapter 11 to make it easier to read; and it also makes other clarifications, formatting changes and typographical corrections.

CONTACT PERSON:
Robert Huber, Department of Environmental Quality, Environmental Complaints and Local Services Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-6222

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 11, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

252:641-1-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Chapter is to ensure that sewage is properly treated in order to protect the waters of the State, the public health and the environment. This Chapter establishes requirements for the design, construction, installation and operation of individual and small public on-site sewage ~~disposal~~ treatment systems. This Chapter also establishes requirements for persons seeking certification as installers of individual sewage ~~disposal~~ treatment systems and for persons seeking certification to perform soil profile descriptions.

(b) **Authority.** 252:641 is authorized by 27A O.S. §§ 2-1-101, 2-6-402 and 403; and 59 O.S. § 1158.

(c) **Applicability.** The rules in this Chapter apply to:

(1) Any person who owns, designs, constructs, installs, modifies, repairs or operates an on-site sewage ~~disposal~~ treatment system; ~~and~~

(2) Any person who seeks certification from the DEQ to install, modify or repair individual sewage ~~disposal~~ treatment systems~~.~~; and/or

(3) Any person who seeks certification from the DEQ to perform soil profile descriptions.

(d) **Disclaimer.** The design standards contained in this Chapter are established as minimum criteria and do not guarantee a system's performance.

(e) **Appendices.** All references to appendices are appendices to this Chapter.

252:641-1-2. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 *et seq.*), the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Absorption field" means ~~an area which contains soils suitable for the installation of a subsurface absorption system~~ a ten thousand square-foot (10,000 ft^2) rectangular area that contains three acceptable soil test holes and does not contain any unacceptable soil test holes.

"Aerobic system" means a sewage ~~disposal~~ treatment system ~~which~~ that treats sewage in an aerobic treatment unit and then applies the treated sewage to the surface as described in ~~252:641-13~~ Subchapter 13 of this Chapter.

"Aerobic treatment" means the digestion of organic matter and settleable solids in an oxygenated environment to produce a clarified liquid.

"Aerobic treatment unit" means a watertight covered receptacle designed to receive, store, and provide aerobic treatment to sewage prior to ~~its disposal~~ surface application.

"Alternative system" means an on-site sewage ~~disposal~~ treatment system that ~~does not meet~~ varies from the requirements of on-site sewage ~~disposal~~ treatment systems described in this Chapter.

"Certified installer" means a person in the business of installing or constructing individual sewage ~~disposal~~ treatment systems who has been certified by the DEQ to inspect his/her installations.

"Certified soil profiler" means a person who has been certified by the DEQ to perform soil profile descriptions to be used to design on-site sewage treatment systems.

"Chamber" means a molded rigid plastic, arch shaped, hollow structure with an exposed bottom area and louvered sidewall for infiltration of effluent into adjoining bottom and sidewall soil areas.

"DEQ" means the Department of Environmental Quality.

"Distribution structure" means a watertight concrete or plastic compartment, box, or solid piping ~~which receives sewage and distributes it evenly~~ that allows the distribution of sewage at the same elevation throughout the subsurface treatment field.

"Dosing Tank" means a storage reservoir that contains an automatically controlled pump that is capable of delivering sewage to an on-site sewage treatment system at a specific hourly rate.

"Evapotranspiration/absorption (ET/A) system" means an on-site sewage treatment system that utilizes a subsurface treatment field designed to distribute sewage for treatment through evaporation, transpiration and absorption.

"French Drain (Curtain Drain)" means a subsurface installation of perforated pipe and filter material used to divert groundwater.

"Individual sewage ~~disposal~~ treatment system" means a sewage disposal system ~~which serves~~ that treats sewage from one individual residence or duplex and is not available for use by the general public.

"Installer" means a person who installs or who is in the business of contracting to install or furnishing labor to install on-site sewage ~~disposal~~ treatment systems.

"Level" means within a four-inch range of the same elevation.

"Lift station" means a short-term storage reservoir, containing an automatically controlled pump, that pumps sewage to a higher elevation for treatment ~~or disposal~~.

"Major earth fill area" means any area where soil has been added to change the elevation from the original ground level by more than one (1) foot.

"Modification" means the expansion or relocation of any part of an existing on-site sewage treatment system, which does not fall under the definition of new installation.

"New installation" means the installation of a new on-site sewage treatment system. This includes the replacement of an existing lagoon, subsurface field or aerobic treatment unit, even when the existing septic tank is not replaced.

"On-site sewage ~~disposal~~ treatment system" means an individual sewage ~~disposal~~ treatment system as defined in this Chapter or a small public sewage ~~disposal~~ system as defined in 27A O.S. § 2-6-101(12).

"Redoximorphic soil features" means soil that, due to wetness, contains features that exhibit a color of less than or equal to two (2) chroma and greater than or equal to four (4) value.

"Repair" means the repair of any part of an existing on-site sewage treatment system or the replacement of any part of an existing on-site sewage treatment system as long as the replacement part is placed in the exact same location that the original part had been located.

"Retention structure" is a sealed concrete or plastic structure that retains sewage until it reaches a depth of ten inches (10") and then allows it to flow to another trench.

"Rock fragments" means unattached pieces of rock two millimeters (2 mm) in diameter or larger that are resistant to rupture (strongly cemented or extremely hard).

"Sewage" means wastewater that generally originates as human waste from certain activities including using toilet facilities, washing, bathing, preparing foods and washing laundry, excluding industrial wastewater.

"Soil profile description" means the identification and characterization of soil at a specific site.

"Soil texture" means the percent by weight of sand, silt, and clay for particles smaller than two millimeters (2 mm) in diameter.

"Standardized alternative" means an alternative system for which DEQ has procedurally defined installation requirements so that DEQ can evaluate the system's performance.

"Storage area" means the bottom ten inches (10") of a trench in a subsurface field that has voids for storage of wastewater to be absorbed by the soil or transpired.

"Storage media" means clean, screened rock, gravel or tire chips or any combination of the three, which is one-half to two and one-half inches (1/2"-2-1/2") in diameter with no more than 10% by weight passing through a one-half inch (1/2") screen.

"Subsurface absorption system" means an on-site sewage treatment system that utilizes a subsurface treatment field designed to distribute sewage into the native soil for treatment.

"Subsurface treatment field" means the network of trenches for subsurface absorption systems or ET/A systems.

"Water saturated soil" means soil characterized by either the presence of groundwater or redoximorphic soil features ~~identified by a soil color of less than or equal to two (2) chroma and greater than or equal to four (4) value~~.

252:641-1-2.1. Authorizations and permits for on-site sewage ~~disposal~~ treatment systems

(a) **~~Applicability~~ Requirement for authorizations and permits.** ~~Before modifying or constructing an on-site sewage disposal system,~~ No one may install a new or modify an existing on-site sewage treatment system until the owner of the property where the system is or will be located ~~must first apply for and obtain~~ has applied for and obtained either:

(1) DEQ authorization to construct an on-site sewage ~~disposal~~ treatment system under a general permit; or

(2) a permit to construct an alternative on-site sewage ~~disposal~~ treatment system.

(b) **~~Authorization~~ Authorizations under general permit.**

(1) An applicant seeking an authorization to construct a new or modify an existing on-site sewage ~~disposal~~ treatment system shall submit a completed and signed:

(A) DEQ Form 641-575 "Request for Authorization/Permit to Construct an On-Site Sewage ~~Disposal~~ Treatment System" along with the appropriate fee(s) to DEQ; and

(B) DEQ Form 641-581 "Report for On-Site Sewage ~~Disposal~~ Treatment" to the local DEQ office. The detail needed varies with each system design; guidance will be provided by the local DEQ office. ~~Applications for aerobic systems shall include a copy of a signed maintenance contract.~~

(2) Any change that would cause an on-site sewage ~~disposal~~ treatment system to no longer qualify for authorization under a general permit will require the owner/operator to apply for a permit for an alternative system.

(c) **Permits for alternative systems.** Applicants seeking a permit to ~~construct~~ install or modify an alternative on-site sewage ~~disposal~~ treatment system shall submit a completed and signed:

(1) DEQ Form 641-575 "Request for Authorization/Permit to Construct an On-Site Sewage ~~Disposal~~ Treatment System" along with the appropriate fee(s) to DEQ;

(2) DEQ Form 641-581 "Report for On-Site Sewage ~~Disposal~~ Treatment" to the local DEQ office; and

(3) DEQ Form 641-581Sup. "Supplemental Application for an Alternative On-Site Sewage ~~Disposal~~ Treatment System" to the local DEQ office for DEQ's review and approval.

252:641-1-3. General requirements for on-site sewage ~~disposal~~ treatment systems

(a) **Inspections.** All new installations of, modifications to and/or repairs to on-site sewage ~~disposal~~ treatment systems shall be inspected and approved by the DEQ, or installed, self-inspected and approved by a certified installer before new installations, modifications or repairs can be backfilled and/or before the system may be placed into operation.

~~(1) The installer shall not backfill subsurface systems or place any system into operation until the system has been inspected for compliance with the rules in this Chapter and approved by the DEQ or a certified installer.~~

~~(2)~~ The installer shall be responsible for requesting any required DEQ inspections.

(b) **~~Disposal~~ Treatment.** On-site sewage ~~disposal~~ treatment systems shall only be used for ~~disposal~~ treatment of sewage, as defined in 252:641-1-2. All sewage must be ~~disposed of~~ treated according to this Chapter.

(c) **Minimum lot size.** The applicant shall comply with the minimum lot size requirements as set forth in Appendix A. Plats recorded before January 1, 1974, are not subject to minimum lot size requirements but systems built in those platted areas must meet the construction requirements of this Chapter.

(d) **Sizing.** All on-site sewage ~~disposal~~ treatment systems shall be sized using the charts in Appendix H.

(1) **Determining flow for small public sewage system.** Small public sewage systems shall be designed using the information in Appendix F to estimate flow unless actual flow data or a more accurate estimation method is available.

(2) **Determining flow for individual sewage treatment systems.** The size charts in Figures 1, 3, 5, and 7 of Appendix H, for individual sewage ~~disposal~~ treatment systems are based on an average water usage of six thousand (6,000) gallons per month for a residence of two (2) bedrooms or less, with an additional two thousand (2,000) gallons per month for each additional bedroom. The size of individual sewage ~~disposal~~ treatment systems should be increased if the actual water usage exceeds the above-stated average.

(e) **Separation distances.** The applicant must comply with the required separation distances listed in the table in Appendix E.

(f) **Primary treatment.** All on-site sewage ~~disposal~~ treatment systems in this Chapter must include a septic tank or ~~an aerobic treatment unit as~~ a trash tank for primary treatment.

(g) **Pipe specifications.** All pipe and chambers used in on-site sewage ~~disposal~~ treatment systems shall meet the minimum specifications listed in Appendix C.

252:641-1-4. Operation, repairs and maintenance

(a) **Proper operation** On-site sewage ~~disposal~~ treatment systems shall be maintained and operated properly so that sewage or effluent from the system is properly treated and does not surface, pool, flow across the ground or discharge to surface waters.

(b) **Failing systems.** The person owning or otherwise responsible for a system shall take prompt action to repair a failing system, prevent further violations and remediate the site.

~~(c) **Repairs and modifications.** Repairs, modifications or additions to existing on-site sewage disposal systems shall be inspected and approved by the DEQ or installed, inspected and approved by a certified installer.~~

SUBCHAPTER 3. SOIL TESTS

252:641-3-1. General provisions

(a) ~~**General purpose**~~ **Requirement for soil test.** A soil test, either a ~~percolation test or a~~ soil profile description or a percolation test, shall be used to identify an ~~acceptable area for an~~ absorption field for the installation or modification of subsurface absorption systems and to identify the proper location of ET/A systems. Modifications to subsurface systems do not have to meet the sizing requirements for new installations. Soil tests are not required to repair subsurface absorption systems or ET/A systems, or to design lagoons~~,~~ or aerobic systems~~ or evapotranspiration/absorption (ET/A) systems~~. All soil tests shall be performed in accordance with this Subchapter.

(b) **Credentials.** Soil tests may only be performed by Professional Engineers, Professional Land Surveyors, Professional Sanitarians or Professional Environmental Specialists registered to practice in Oklahoma or Soil Scientists as defined in 27A O.S. § 3-1-103(20). Additionally, ~~individuals~~ an individual performing soil profile descriptions must either be:

(1) an ~~Environment~~ Environmental Specialist for the DEQ and authorized by ~~DEQ's Executive Director~~ DEQ to perform soil profile descriptions; or

(2) ~~be~~ certified by the DEQ to perform soil profile descriptions.

(c) **Test hole placement.** Three test holes shall be placed in the proposed absorption field at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. The DEQ may approve or require alternative configurations.

(d) ~~**Defining the acceptable field.** Three acceptable test holes located in a ten thousand square foot (10,000 ft²) rectangular area define an acceptable absorption field. Larger absorption fields may require additional test holes.~~ **Large absorption fields.** Additional soil testing will be required for absorption fields larger than ten thousand square feet (10,000 ft²). Contact the local DEQ office for guidance.

(e) **Placement of subsurface systems.**

(1) **Subsurface absorption systems.** Subsurface absorption systems must be located within an absorption field.

(2) **ET/A systems.** ET/A systems must be located so as to include within the subsurface treatment field three soil test holes that meet all of the requirements for acceptable test holes, except:

(A) the percolation rate must be greater than sixty (60) minutes per inch or the soil must be classified as a Group 5; and

(B) the test hole depth does not have to exceed thirty inches (30").

(~~e~~f) **Submission to the DEQ.** When a soil test is required, the results shall be submitted to the local DEQ office on DEQ Form 641-581 "Report for On-Site Sewage ~~Disposal~~ Treatment" or in a format approved by the DEQ, prior to the construction of the on-site sewage ~~disposal~~ treatment system.

(~~f~~g) **Verification of design.** If there is reason to believe the original soil test results are inaccurate or that there is water saturated soil or soil impervious to boring in any of the test holes at any depth up to thirty-six inches (36"), the system design may be verified by the DEQ using a soil profile description. The results of a soil profile description shall supercede the results of any percolation test completed in the same proposed absorption field.

(~~g~~h) **Fill areas and excavation.** If there has been a fill of more than six inches (6") of soil or any excavation over an identified ~~acceptable~~ absorption field, the local DEQ office must be contacted to determine if an additional soil test is needed. Under no circumstances, shall a soil test be performed in major earth fill areas.

252:641-3-2. Percolation test method

(a) **Test hole requirements.** The following test hole requirements shall be met:

(1) **Size.** Test holes shall be dug or bored, four to twelve inches (4"-12") in diameter with vertical sides~~,~~ to ~~the same depth, within a range of eighteen to thirty inches (18"-30")~~ a depth of at least twenty-four inches (24") and no more than thirty-six inches (36"). Test holes shallower than twenty-four inches (24") may be used to design subsurface systems under the alternative system approval process.

(2) **Soil surfaces.** The bottoms and sides of the test holes shall be scratched with a sharp-pointed instrument to relieve any smeared soil surfaces. Loose material shall be removed from the hole.

(3) **Prohibitions.** Test holes dug through animal burrows, root channels or ~~cracked~~ soil that is cracked due to dry weather conditions shall not be used.

(b) **Presoak period.** The presoak period shall commence no earlier than twenty-four (24) hours prior to the start of the percolation test procedure. Each test hole shall be ~~filled~~ presoaked

by filling them with water and ~~refilled~~ refilling them as necessary to maintain a water depth of at least twelve inches (12") ~~in the holes~~ for at least four (4) hours ~~before testing~~.

(c) **Percolation test procedure.** At the completion of the presoak, the depth of the water shall be adjusted to approximately ten inches (10") above the bottom of the test holes. The water level shall be measured from a fixed reference point. The drop in the water level in sixty (60) minutes or the time it takes until four inches (4") of water has percolated into the soil shall be measured. This information shall be used to calculate the percolation rate for each individual hole in minutes per inch.

(d) **Identification of acceptable ~~absorption field~~ percolation test holes.** ~~The following explain how to identify an acceptable absorption field:~~ A percolation test hole is acceptable if the test hole exhibits a percolation rate of less than or equal to sixty (60) minutes per inch and if groundwater was not encountered in the hole.

~~(1) If each of the three (3) test holes exhibits a rate less than or equal to sixty (60) minutes per inch, then the applicant has identified an acceptable absorption field site.~~

~~(2) If any of the three (3) test holes exhibits a rate greater than sixty (60) minutes per inch, the applicant has identified an unacceptable absorption field site. However, the applicant may conduct additional testing, using uniformly positioned holes, until three (3) holes are located which will define an acceptable absorption field.~~

~~(3) An absorption field shall not contain test holes that had a percolation rate greater than sixty (60) minutes per inch or in which groundwater was encountered.~~

(e) **Calculating the percolation rate.** If the rates of any two (2) test holes in the proposed absorption field vary by more than fifteen (15) minutes, the percolation rate shall be considered the rate of the slowest test hole. Otherwise, the percolation rate shall be determined by averaging the percolation rates for the three (3) test holes and then rounding the result to the nearest whole number.

(f) **Sizing.** ~~The system~~ New installations of subsurface absorption systems shall be sized based on the ~~average~~ percolation rate using the charts in Appendix H, Figures 1(a) and 2(a).

(g) **Information to be reported.** The following information must be reported to the DEQ on DEQ Form 641-581 "Report for On-Site Sewage ~~Disposal~~ Treatment" or in a format approved by the DEQ:

(1) The location of each test hole (identified from two fixed reference points),

(2) The depth and percolation rate, along with the depth to groundwater if encountered, for all test holes,

(3) The results of the percolation test, with all results rounded to the nearest whole number,

(4) The type and size of the proposed system(s), ~~and~~

(5) If ~~an absorption~~ a subsurface treatment field is proposed, the size and the minimum and maximum depth of the subsurface system~~.~~, and

(6) The name and signature of the person performing the pre-soak.

252:641-3-4. Soil profile descriptions

(a) **Test hole requirements.** Test holes may be augered borings, continuous core borings, or excavated pits.

(1) **Borings.** ~~Test holes~~ Borings shall allow for the classification of the soil in six-inch intervals and shall be bored to a minimum depth of forty-eight inches (48") ~~unless~~ or until one of the following is encountered first:

(A) ~~Rock, rock fragments or soil~~ A layer that is impervious to boring; or

(B) Water saturated soil.

(2) **Pits.** If excavated pits are used, they shall:

(A) Have a depth of forty-eight inches (48") unless rock or water saturated soil is encountered first;

(B) Be a minimum of thirty-six inches (36") wide and sixty inches (60") long; and

(C) Have one end sloped or stepped to allow for entry.

(b) **~~Acceptable absorption field.~~** ~~An acceptable absorption field shall contain three acceptable test holes.~~ **Identification of acceptable soil profile description test holes.**

(1) **Acceptable test holes.** Test holes are acceptable *unless* they contain a soil interval that:

(A) Is impervious to boring at any depth up to thirty-six inches (36");

(B) Contains water saturated soil at any depth up to thirty-six inches (36"); ~~and~~ and/or

(C) Is classified as a Group 1 or 5 soil between twelve inches (12") and thirty-six inches (36").

(2) ~~If one or more of the original test holes is unacceptable, additional testing using uniformly positioned holes may be performed until three acceptable holes are located.~~ **Verifying limiting layers using pits.** Any boring that is found to be unacceptable due to the presence of ~~rock, rock fragments or soil that is classified as Group 5~~ a layer that is impervious to boring or that contains redoximorphic soil features may be further verified using an excavated pit. The results of the pit(s) shall override the results of borings completed in the same proposed absorption field.

~~(3) An absorption field shall not contain unacceptable test holes.~~

(c) **Classifying soil groups.** For each acceptable test hole, the soil texture and soil group for each six-inch interval between a depth of twelve inches (12") and the bottom of the test hole shall be identified using the guidelines found in the "DEQ/OSU Soil Classification Manual" and classified as one of the soil groups in Appendix B.

(d) **Sizing.** Of the three acceptable test holes, the one with the highest clay content shall be used to size the subsurface absorption system. In that test hole, the most prevalent soil group between twelve inches (12") and thirty-six inches (36") shall be identified. The system shall be sized using the charts in Appendix H, Figures 1(b) and 2(b) based on the identified soil group.

(e) **Information to be ~~recorded~~ reported.** The following information must be ~~recorded~~ reported to DEQ on DEQ Form 641-581 "Report for On-Site Sewage ~~Disposal~~ Treatment":

(1) The location of each test hole (identified from two fixed reference points);

(2) The soil group for each six-inch interval between a depth of twelve inches (12") and the bottom of the test hole;

(3) The depth and description of any rock, rock fragments or water saturated soil layer~~,~~;

(4) The type and size of the proposed system(s)~~,~~; and

(5) If an absorption field is proposed, the maximum depth of the subsurface ~~system~~ absorption field.

SUBCHAPTER 5. BUILDING SEWER~~,~~ AND COLLECTION ~~SYSTEM AND OTHER SOLID PIPE~~ SYSTEMS

252:641-5-2. Installation

(a) **Minimum fall.** The following minimum fall requirements shall be met:

(1) **Three-inch and four-inch pipe.** Pipe having a diameter of three inches (3") or four inches (4") that delivers sewage to a septic tank~~, an aerobic treatment unit, or a pump tank~~ or a trash tank shall be installed with a minimum fall of one-eighth inch (1/8") per foot.

(2) **Six-inch pipe.** Pipe having a diameter of six inches (6") that delivers sewage to a septic tank~~, an aerobic treatment unit, or a pump tank~~ or a trash tank shall be installed with a minimum fall of one-sixteenth inch (1/16") per foot.

~~(3) Unless a lift pump is used, there must be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the:~~

~~(A) top of the media in the highest absorption trench;~~

~~(B) top of the louvers of a chamber in the highest absorption trench; and~~

~~(C) bottom of the outlet of the retention structure.~~

(b) **Cleanouts.** The following are the minimum requirements for locating two-way sanitary cleanouts:

(1) For all pipe located upstream of a septic tank, a two-way sanitary tee cleanout shall be installed:

(A) Within five feet (5') from where the plumbing stubs out of the building or appurtenance to the building;

(B) Within five feet (5') after each change in direction of more than forty-five degrees (45°); and

(C) For each one-hundred-foot interval.

(2) Nothing in this subsection shall require the installation of more than one (1) two-way sanitary cleanout per one-hundred-foot section of straight pipe. For purposes of this paragraph, straight pipe is pipe that does not have any change of direction of more than forty-five degrees (45°).

SUBCHAPTER 7. SEPTIC TANKS

252:641-7-2. Types of tanks

(a) **Concrete tanks.** Concrete tanks shall be constructed of a mix which demonstrates a twenty-eight-day compressive strength of three thousand pounds per square inch (3,000 psi). They may be poured in place or precast, but, in either case, shall be monolithically poured and mechanically vibrated.

(b) **Fiberglass and plastic tanks.** Fiberglass and plastic tanks shall meet either IAPMO ~~standard PS-1-99 or CSA B66-00~~ or CSA standards for septic tanks and shall be installed according to the manufacturer's recommendations. If the tank does not bear the IAPMO or CSA mark, then DEQ will require the installer to submit documentation from IAPMO or CSA stating the tank meets the above standards.

252:641-7-4. Liquid capacity

(a) **Individual system.** A septic tank used in an individual sewage ~~disposal~~ treatment system for a residential unit with four (4) or less bedrooms shall have a liquid capacity of at least one thousand (1,000) gallons. Two hundred and fifty (250) gallons of capacity must be added for each additional bedroom.

(b) **Small public sewage system.** The liquid capacity for a septic tank used in a small public sewage ~~disposal~~ system shall be the daily flow plus fifty percent (50%) with a one-thousand-gallon minimum.

(c) **Two-compartment tanks.** The capacity of the influent compartment of a two-compartment tank shall not be less than one-half (1/2) nor more than two-thirds (2/3) of the total required liquid capacity of the tank.

(d) **All septic tanks.** All septic tanks shall be designed to have:

(1) a liquid depth of at least three feet (3') but not more than six and one-half feet (6-1/2'); and

(2) an air space of eight inches (8") or more inside the tank.

SUBCHAPTER 9. LIFT STATIONS AND DOSING TANKS

252:641-9-1. General provisions

(a) **Septic tank.** All sewage entering a lift station or a dosing tank must first pass through a septic tank or a trash tank.

(b) **Type of tank.** The type of tank used must meet the requirements of 252:641-7-2.

(c) **Pump discharges.** Pump discharges shall flow through a structure that provides an air gap.

252:641-9-2. Design

Lift stations and dosing tanks shall be designed as follows:

(1) Pumps shall be designed to pump sewage or other liquid containing fine particles/suspended solids and be rated to pump at least the average daily flow the required distance and elevation.

(2) The pump ~~chamber~~ compartment shall have a manhole opening of at least twenty-four inches (24"). The manhole cover shall have a lock, locking bolt, or some type of fastener that requires tools for removal.

(3) The float in the pump ~~tank~~ compartment shall be set so that the pump ~~tank~~ compartment is never more than half full.

(4) An alarm to alert the owner or operator of a system failure shall be installed. The alarm shall be set to activate if the pump ~~tank~~ compartment becomes more than one-half (1/2) full.

(5) The pump compartment shall have a minimum storage capacity of one thousand (1,000) gallons.

(A) For systems with ~~an average~~ daily ~~flow~~ flows over five hundred (500) gallons ~~per day~~, the capacity of the pump ~~tank~~ compartment shall be at least twice the ~~average~~ highest daily flow.

(B) For systems with an average daily flow over two thousand (2,000) gallons ~~per day~~, the capacity of the pump ~~tank~~ compartment in lift stations may be reduced to one-half (1/2) of the average daily flow, if a backup pump is available on site.

252:641-9-3. Installation

Lift stations shall be installed in accordance with Appendix J. The lift station or dosing tank shall be installed so that the pump can be removed without workmen entering the pump ~~chamber~~ compartment.

(1) A threaded union shall be installed in the discharge line, located within eighteen inches (18") of the manhole entry to the wet well.

(2) A check valve shall be installed in the discharge line after the threaded union. The check valve shall be the same diameter as the discharge line.

(3) The manhole opening shall extend a minimum of two inches (2") above ground elevation.

252:641-9-4. Dosing requirements

Dosing shall be regulated by timers or by piping and valves that allow excess pumped effluent to be returned to the dosing tank. The daily dosing shall be at least the average daily flow not to exceed:

(1) one-fourth (1/4) of the design capacity of the treatment system in a one-hour period; and

(2) the daily treatment capacity of the treatment system in any given 24-hour period.

SUBCHAPTER 11. ~~ABSORPTION FIELDS~~ SUBSURFACE SYSTEMS

252:641-11-1. General provisions

(a) **Septic tank.** All sewage entering ~~an absorption field~~ a subsurface treatment field must first pass through a septic tank or an aerobic treatment unit.

~~(b) **Location.** All absorption trenches:~~

~~(1) Except evapotranspiration/absorption (ET/A) trenches, shall be located within an acceptable absorption field; and~~

~~(2) Shall be installed more than five feet (5') from a septic tank.~~

~~(c) **Limitation.** Systems shall be constructed so that no sewage flows through more than one hundred fifty feet (150') of perforated pipe in any given path.~~

(b) **Delivery method.** All sewage shall be conveyed to the subsurface treatment field through solid pipe, which shall meet the specifications listed in Appendix C. No part of that solid pipe may rise above the outlet of the septic tank.

(c) **Fall.** Unless a lift pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the:

(1) highest point of the storage media in the subsurface treatment field; or

(2) highest point of the louvers of a chamber in the subsurface treatment field.

(d) **Surface water.** Surface water shall be diverted around or away from the ~~absorption~~ subsurface treatment field.

(e) **Layout examples.** Refer to Appendix K, Figures 1-5.

252:641-11-2. ~~Absorption trenches~~ Subsurface treatment fields

~~(a) **Width.** Trenches shall be twenty-four inches (24") wide.~~

~~(b) **Depth.** The depth of the trenches shall be at least eighteen inches (18"), and no more than thirty inches (30").~~

~~(1) If a percolation test is used to define the absorption field, then the depth of the trenches shall be within six inches (6") of the test hole depth.~~

~~(2) If a soil profile description is used to define the absorption field, then there shall be a minimum of eighteen inches (18") between the bottom of the trench and:~~

~~(A) Rock or soil that is impervious to boring;~~

~~(B) Water saturated soil; or~~

~~(C) A Group 1 or 5 soil.~~

~~(c) **Linear feet.** All subsurface sewage disposal systems, except ET/A systems, must meet the minimum linear feet requirements as set forth in Appendix H, Figures 1 and 2.~~

~~(d) **Surface contours.** Each trench shall be constructed to follow the surface contours and to maintain a uniform depth throughout the length of the trench.~~

(a) **Location.** All subsurface treatment fields shall be:

(1) located as described in 252:641-3-1(e); and

(2) installed more than five feet (5') from the septic tank or aerobic treatment unit.

(b) **Minimum linear length.** If perforated pipe is used between distribution structures and installed in accordance with the trench requirements in this Subchapter, it may be counted as part of the overall required length of the subsurface treatment field. All subsurface treatment fields must meet the minimum length requirements set forth in the appendices as follows:

(1) **Subsurface absorption systems.** For subsurface absorption systems, the minimum length requirements are set forth in Appendix H, Figures 1 and 2.

(2) **ET/A systems.** For ET/A systems, the minimum length requirements are set forth in Appendix H, Figures 3 and 4.

(c) **Trench length limitation.** Systems shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe or chambers in any given path.

(~~e~~d) ~~**Spacing**~~ **Trench spacing.** The trenches shall be spaced at least eight feet (8') apart, center to center.

~~(f) **Absorption media.** Where perforated pipe is used, absorption trenches shall contain at least ten inches (10") of clean, screened rock, gravel or tire chips or any combination of the three. At least two inches (2") of material shall be installed above and below the perforated pipe. The size of these materials shall range from one-half to two and one-half inches (1/2"-2 1/2") with no more than 10% by weight passing through a one-half inch (1/2") screen. Refer to Appendix M, Figure 1.~~

~~(g) **Backfill.** The depth of the backfill shall be consistent, shall not vary more than four inches (4"), and shall consist of at least eight inches (8") of topsoil.~~

~~(h) **Level.** For purposes of this subsection, "level" is considered to be the same elevation, within a four-inch range.~~

~~(1) The top of each absorption trench must be level.~~

~~(2) The top of the absorption media must be level.~~

~~(3) If absorption trenches are not separated by a retention structure, all parts of the absorption trenches must be level.~~

(e) **Trench width.** All trenches in a subsurface treatment field shall be twenty-four inches (24") wide.

(f) **Trench depth.** Each trench shall have a uniform depth of at least eighteen inches (18"), and no more than thirty inches (30"), except for ET/A systems, which cannot have a depth exceeding twenty-four inches (24"). The depth of the trenches in a subsurface treatment field shall be consistent and shall not vary more than four inches.

(g) **Vertical separation.**

(1) **Soil profiles.** If a soil profile description is used to define the absorption field, then there shall be a minimum of eighteen inches (18") of separation between the bottom of the trench and:

(A) a layer that is impervious to boring;

(B) water saturated soil; and

(C) a Group 1 or 5 soil.

(2) **Percolation test.** If a percolation test is used to define the absorption field, then the depth of the trenches shall be at least six inches (6") less than the depth of the percolation test holes.

(h) **Storage area.** The following requirements apply to the storage area in the trenches:

(1) **Perforated pipe.** When perforated pipe is used to distribute sewage throughout the storage area the following apply:

(A) The perforated pipe shall meet the specifications listed in Appendix C.

(B) The perforated pipe shall extend the entire length of the storage area.

(C) The trenches shall contain at least ten inches (10") of storage media.

(D) At least two inches (2") of storage media shall be installed above and below the perforated pipe.

(E) The top of the storage media must be level:

(i) in each trench; and

(ii) across the subsurface treatment field, unless installed in trenches of different elevations.

(F) A retention structure must be used between trenches of different elevations.

(G) Trench installation examples are located in Appendix M, Figure 1.

(2) **Chambers.** When chambers are used to distribute sewage throughout the storage area the following apply:

(A) The chambers shall meet the specifications listed in Appendix C.

(B) The chambers shall extend the entire length of the storage area.

(C) The chambers shall be at least twenty-two inches (22") wide with louvers at least ten inches (10") high.

(D) The trenches do not need to contain storage media.

(E) The top of the chambers must be level:

(i) in each trench; and

(ii) across the subsurface treatment field, unless installed in trenches of different elevations.

(F) A retention structure must be used between trenches of different elevations.

(G) The minimum design criteria for the installation of chamber systems in Appendix N shall be followed.

(i) **Retention structure.** ~~In an absorption field where it is not possible to keep the chamber or top of the absorption media level and the backfill a consistent depth,~~ When a retention structure ~~shall be~~ is used~~.~~ :

(1) the top of the outlet pipe of a retention structure or the top of the outlet pipe of a chamber being used as a retention structure shall be fourteen inches (14") above the trench bottom;

(2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with non-sandy soil; and

(3) Appendix L, Figure 1, may be referred to as an example of a retention structure; and Appendix K, Figures 3-5, and Appendix N, Figure 1, may be referred to as examples of layouts of retention systems.

(j) **Backfill.** The following are the backfill requirements for trenches in subsurface treatment fields (for examples, refer to Appendix M):

(1) **Subsurface absorption systems.** For subsurface absorption systems:

(A) the depth of the backfill shall be consistent and shall not vary more than four inches (4"); and

(B) the backfill shall consist of at least eight inches (8") of topsoil.

(2) **ET/A systems.** For ET/A systems:

(A) the trenches shall be backfilled with clean sand to within two inches (2") of the surface;

(B) the sand shall be separated from the storage media or chambers by material that allows the flow of water but prevents the flow of sand; and

(C) after a trench is backfilled with sand, two to four inches (2"-4") of sandy loam soil shall be mounded over the trench.

252:641-11-3. Retention and distribution structures [REVOKED]

~~(a) Retention and distribution boxes shall be constructed in accordance with Appendix L.~~

~~(b) Tees and ells may be used to construct retention or distribution structures.~~

~~(c) Distribution and retention boxes shall be sealed.~~

~~(d) The top of the outlet pipe of a retention structure shall be seven inches (7") above the top of the perforated pipe. The line from the outlet of a retention structure shall be constructed of solid pipe.~~

~~(e) A compacted earthen dam, the entire width of the trench, shall be constructed on the downstream side of each retention structure to reduce any seepage that may bypass the retention structure.~~

~~(f) If perforated pipe is used between distribution structures and installed in accordance with this Subchapter, it may be counted as part of the overall required length of absorption trenches.~~

252:641-11-4. Exceptions [REVOKED]

~~(a) **Evapotranspiration/absorption (ET/A) systems.** If ET/A systems are installed:~~

~~(1) The trenches shall be backfilled with clean sand to within two inches (2") of the surface; the sand shall be separated from the gravel by material which allows the flow of water but prevents the flow of sand. Refer to Appendix M, Figure 2;~~

~~(2) After a trench is backfilled with sand, two to four inches (2"-4") of sandy loam soil shall be mounded over the trench;~~

~~(3) The trench depth shall not exceed twenty-four inches (24"); and~~

~~(4) The length of the trenches shall be determined according to Appendix H, Figures 3 and 4.~~

~~(b) **Chamber systems.** When using chamber systems, the following exceptions apply:~~

~~(1) The top of the chamber shall be below the outlet of the septic tank;~~

~~(2) The trenches do not need to contain gravel;~~

~~(3) The trenches shall be backfilled only with native soil or sandy loam; and~~

~~(4) The top of the chamber outlet pipe shall be thirteen inches (13") above the trench bottom. (Refer to Appendix N.)~~

SUBCHAPTER 13. AEROBIC SYSTEMS

252:641-13-1. General provisions

(a) **Fluctuating flows.** If the daily flow fluctuates so that the flow on any given day during the week exceeds the aerobic treatment unit's daily capacity, then an aerobic system may not be used unless a dosing tank, which meets the requirements of 252:641-9, is installed between the trash tank and the aerobic treatment unit.

(~~a~~b) **Components of aerobic systems.** Aerobic systems shall be comprised of the following:

(1) **Trash tank.** ~~An equalization tank that meets~~ There shall be a trash tank that meets the requirements of ANSI/NSF or 252:641-7-2, ~~with~~ and has a minimum capacity of three hundred (300) gallons~~;~~ or the daily flow, whichever is greater. The trash tank shall have an opening of sufficient size to allow for maintenance. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal.

(2) **Aerobic treatment unit.** ~~An~~ There shall be an aerobic treatment unit that:

(A) has been tested and certified by an ANSI accredited third party certifier as meeting the most current ANSI/NSF Standard 40; and

(B) is rated at or above the average daily flow.

(3) **Method of disinfection.** ~~A~~ There shall be a method to disinfect the treated sewage between the aerobic unit and the pump tank~~;~~. The disinfection method must effectively reduce the fecal coliform bacteria to less than (<) 200MPN/1000 ml. If chlorination is used as the disinfection method, a free chlorine residual of one milligram per liter (1 mg/l) must be maintained.

(4) **Pump tank.** ~~A~~ There shall be a pump tank, which shall:

(A) meet the requirements of ANSI/NSF or 252:641-7-2;

(B) have a minimum capacity of seven hundred (700) gallons or, for systems with an average flow over three hundred fifty (350) gallons per day, have a capacity of at least twice the average daily flow;

(C) have a sampling port in the pump tank at the discharge outlet or in the treated sewage line following the pump tank;

(D) have a float in the pump tank set so that the pump tank is never more than one-half (1/2) full;~~ and~~

(E) have a high-water alarm set to activate if the pump tank becomes more than one-half (1/2) full~~.~~; and

(F) have an opening of sufficient size to allow for maintenance. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal.

(5) **Sprinkler system.** ~~A~~ There shall be a sprinkler system to apply properly treated sewage onto the surface of the ground~~; and~~.

(6) **Alarm.** ~~An~~ There shall be an alarm to alert the owner/operator of a system failure.

(c) **Solid pipe.** The solid pipe used to connect the components of an aerobic system must meet the specifications listed in Appendix C. Unless a lift pump is utilized, there shall be fall between:

(1) the trash tank and the aerobic treatment unit; and

(2) the aerobic treatment unit and the pump tank.

(~~b~~d) **Other.** In addition, all aerobic systems shall be installed in accordance with the manufacturers' specifications and be covered by a maintenance contract for the first two years of operation.

252:641-13-3. Acceptable application surfaces [REVOKED]

~~The surface application area shall be landscaped and/or terraced to prevent runoff.~~

252:641-13-4. Surface application

(a) **Application area.** The ~~applicant~~ application area must:

(1) ~~comply with~~ meet the size requirements of Appendix H, Figures 5 and 6; and

(2) be vegetated and landscaped and/or terraced to prevent runoff.

(b) **Uniform application.** ~~Distribution pipes, sprinklers, and other application devices which are~~ Sprinklers shall be designed to provide uniform distribution of treated effluent over the entire surface application area ~~shall be used~~.

(1) **Sprinkler design.** ~~When sprinklers are used as the application method, they must function at the design radius.~~ The spray must cover the proper area without misting. Nozzles must have a ~~thirteen degree~~ thirteen-degree (13°) or less trajectory to keep the spray stream low to the ground surface.

(2) **Timing.** Surface application shall be controlled by a timing device and shall take place daily between 1:00 a.m. and 6:00 a.m.~~, not to exceed three (3) hours per day.~~

(3) ~~**Circular spray**~~ **Spray patterns.** ~~The total spray area must meet the design criteria.~~ Overlapped areas may only be counted once toward meeting the total application area requirement.

(c) ~~**Disinfection**~~ **Testing and minimum standard requirements.** ~~Treated sewage shall be disinfected prior to surface application.~~

~~(1) Approved disinfection methods shall include but not be limited to chlorination, ozonation, or ultraviolet irradiation. Fecal coliform bacteria must be effectively reduced to less than (<) 200MPN/1000 ml. If chlorination is used, a free chlorine residual of one milligram per liter (1 mg/l) must be maintained. Properly encapsulated and/or stabilized calcium hypochlorite shall be used in chlorinators that employ tablets or other dry forms such as granules.~~

~~(2) The efficiency of the disinfection procedure shall be established through monitoring of the fecal coliform count or the free chlorine residual. Sampling frequency and testing requirements are listed in the table provided in Appendix D. Samples shall be collected following treatment and disinfection.~~ The owner of the aerobic system is responsible for meeting the testing requirements and minimum standards specified in Appendix D. The results shall be submitted to the local DEQ within thirty (30) days of sampling in a format approved by the DEQ.

(d) **Application rate.** The application rate shall be adjusted and maintained in a manner which will not allow runoff.

SUBCHAPTER 15. LAGOONS

252:641-15-1. General provisions

(a) **Septic tank.** All sewage entering a lagoon must first pass through a septic tank.

(b) Total retention. All lagoons shall be total retention.

(c) **Location.** Applicants shall not locate lagoons where vegetation, timber, or terrain could interfere with prevailing wind action or shade the lagoon during daylight hours. The applicant must comply with separation distance requirements in Appendix E.

(d) **Minimum lot size exception.** Minimum lot size requirements for the installation of a lagoon may be waived without going through the alternative system process for an existing residence having a failing ~~absorption field~~ subsurface treatment system on a lot smaller than two and one-half (2-1/2) acres when additional ~~lateral lines~~ subsurface treatment trenches cannot be installed or will not be effective.

(e) **Prohibitions.** The owner/operator shall not dispose or store wastes or contaminants other than sewage in the lagoon. The owner/operator shall not discharge or dispose of sludge prior to obtaining ~~a discharge permit or~~ approval ~~of a sludge management plan by~~ from the DEQ ~~under 252:605, 252:520 or 252:656~~.

(f) **Closure.** The DEQ may, when public health or safety issues arise, require the owner/operator to properly close a lagoon when it is no longer in use.

(g) **Examples.** Refer to Appendix O, "Examples of Minimum Design Criteria for Lagoon Installation".

252:641-15-3. Bottom construction

(a) **Level bottom.** The bottom of the lagoon shall ~~not vary more than three inches (3") in elevation~~ be level.

(b) **Compacted clay.** The bottom of the lagoon shall be constructed of homogeneous clay soil and shall be compacted thoroughly.

(c) Leakage test required.

~~(1)~~ During the final inspection, a leakage test shall be conducted on the lagoon.

~~(2)~~ The leakage test shall be performed in a manner approved by the DEQ or by:

(1) digging one (1) hole in the bottom of the lagoon no deeper than six inches (6");

(2) ~~and filling~~ presoaking the hole by filling it with water and refilling it as necessary to maintain a water depth of six inches (6") in the hole for at least four (4) hours. The presoak shall commence no earlier than twenty-four (24) hours prior to the start of the leakage test procedure; and

(3) ~~The leakage rate shall not exceed one inch (1")~~ recording the drop in the water level in sixty (60) minutes or the time it takes until one inch (1") of water has percolated into the soil.

(d) **Failing leakage test.** If the leakage rate exceeds one inch (1") in sixty (60) minutes, the lagoon shall be lined with bentonite, twelve inches (12") of compacted clay (~~Class~~ Group 5 soil), or a synthetic liner in accordance with OAC 252:656. The lagoon bottom shall be retested after installation of a clay or bentonite liner and may not be approved until the leakage rate is less than or equal to one inch (1") in sixty (60) minutes.

252:641-15-5. Lagoon inlet line and septic tank outlet ~~lines~~

(a) **Lagoon inlet line.** The lagoon inlet line shall:

(1) be made of solid pipe that complies with the specifications listed in Appendix C;

(2) terminate in the center of the lagoon;

(3) be anchored and supported; and

(4) ~~shall~~ discharge onto a concrete structure. ~~The inlet line shall be anchored and supported.~~

(b) **Septic tank outlet ~~line~~.** For gravity flow systems, the outlet of the septic tank shall be at least one foot (1') above the designed ~~five-foot~~ five-foot (5') maximum liquid depth of the lagoon.

252:641-15-6. Fence

(a) **Fence required.** ~~The~~ In order to prevent unauthorized access to the lagoon, the lagoon area shall be surrounded with a fence unless the entire property is fenced and access is controlled. A gate shall be provided for access for mowing equipment and maintenance needs. In order to protect public health and safety, the DEQ may require more ~~strict~~ stringent fencing requirements, even when the entire property is fenced.

(b) **Specifications.** At a minimum, the fence shall be four feet (4') high and provide protection equivalent to the protection afforded by a ~~chain link~~ woven wire or equally-spaced five (5) wire fence. Lagoons ~~serving more than one residential unit~~ that fall within the definition of a small public sewage system and that are located within three hundred fifty feet (350') of existing or platted residential areas or that are in public access areas shall be surrounded by a six-foot (6') ~~chain link~~ woven wire fence or equivalent. No fence shall interfere with wind action to the lagoon's surface or shade the lagoon.

SUBCHAPTER 21. CERTIFICATION FOR ON-SITE SEWAGE ~~DISPOSAL~~ TREATMENT SYSTEM INSTALLERS

252:641-21-1. General provisions

(a) **Applicability.** Persons ~~who are required by law to be~~ may become certified by DEQ to install on-site sewage ~~disposal~~ treatment systems ~~can become certified~~ by complying with the requirements of this Subchapter.

(b) **Inspections.** Certified installers may self-inspect and approve only systems they install, modify, or repair within the category(ies) for which they are certified. ~~The type of system that a certified installer may self-inspect and approve depends on their classification~~ Certified installers may self-inspect and approve any lift-stations they install. However, ~~regardless of their classification, they~~ certified installers may not self-inspect and approve ~~any alternative system or~~ any:

(1) small public sewage system that has ~~an average~~ a design flow greater than one thousand, five hundred (1,500) gallons per day; or

(2) alternative system, except for subsurface standardized alternative systems, which may be self-inspected and approved by installers certified in the subsurface category.

(c) **Compliance.** Certified installers shall comply with all the rules in this Chapter.

(d) Certification period. Certifications shall be effective from January 1 or the day of certification, through December 31, unless modified by an Administrative Proceeding.

(e) **Specified dates.** If any date specified in this Subchapter falls on a weekend or holiday, the date of the following working day shall be the effective date.

(f) **Application time frame.** Applications will become void if the applicant fails to meet all certification requirements within one hundred eighty (180) days of being notified of any deficiencies. All fees paid are non-refundable when an application is voided.

(g) **Categories of certification.** The following are the categories of certification for which an installer may become certified:

(1) **Subsurface.** The subsurface category includes all systems described in Subchapter 11 of this Chapter.

(2) **Aerobic.** The aerobic category includes all systems described in Subchapter 13 of this Chapter.

(3) **Lagoon.** The lagoon category includes all systems described in Subchapter 15 of this Chapter.

(h) **Levels of certification.** The following are the levels of certification available:

(1) **Class C.** Class C installers are installers who have been certified to install and self-inspect one of the three categories of on-site sewage disposal systems.

(2) **Class B.** Class B installers are installers who have been certified to install and self-inspect two of the three categories of on-site sewage disposal systems.

(3) **Class A.** Class A installers are installers who have been certified to install and self-inspect all three of the categories of on-site sewage disposal systems.

252:641-21-2.1. ~~New certification application~~ Certification requirements

An applicant may ~~apply for a Class C, B or A certification~~ become certified in any category of certification by doing the following:

(1) **Application.** ~~submitting~~ The applicant must submit to the local DEQ office a completed and signed DEQ Form 641-002 "Certified Installer Application"~~,~~ ~~which requires the submission of documentation~~. If the applicant is not currently certified in at least one category of certification, then the applicant must also pay the annual certification fee and submit documentation that the applicant has done the following:

(A) **Installation experience.** The installer must have installed at least ten (10) on-site sewage ~~disposal~~ treatment systems in Oklahoma that meet or exceed the rules in this Chapter as determined by an inspection performed by DEQ. These systems must have been installed within the two-year time period preceding the date of application and may not include any joint inspections required ~~as training in Section 8~~ in (5) of this ~~Subchapter~~ subsection;

(B) **Approval percentage rate.** The installer must have had at least ninety percent (90%) of the systems

he/she installed within the last year approved upon the initial inspection, with any disapproved systems only requiring minor changes; and

(C) **Financial assurance.** The installer must document financial assurance by submitting to DEQ one of the following:

(i) **Surety bond.** The applicant may document financial assurance by submitting to DEQ a surety bond guaranteeing payment or performance in the amount of Ten Thousand Dollars ($10,000) with the following stipulations:

(I) The applicant must be named as the principal of the bond and DEQ must be named as obligee of the bond;

(II) The bond must be effective before the certification can be granted by DEQ and must remain in effect as long as the installer is certified. Upon notification to DEQ that a bond is no longer in effect, DEQ may immediately begin the process to suspend the installer's certification(s); and

(III) Payments made under the terms of the bond shall be made by the surety directly to DEQ. DEQ shall establish an account with these funds from which DEQ may pay for the repair or replacement of a faulty or improperly installed system along with DEQ's costs associated with its response and oversight.

(ii) **Affidavit for tribal and governmental installers.** The applicant may document financial assurance by submitting to DEQ an affidavit that:

(I) the installer is working solely for a federally recognized tribe or a governmental entity; and

(II) the entity will pay for the repair or replacement of faulty or improperly installed systems.

(2) **Training.** ~~completing~~ The applicant must complete the required DEQ training for the category of certification sought;

(3) **Examination.** ~~passing~~ The applicant must pass the examination for the ~~classification~~ category of certification sought ~~as specified in Section 8 of this Subchapter~~ with a score of at least seventy percent (70%). Any applicant found cheating on an examination will not be certified, will be subject to having any current certifications revoked, and shall be prohibited from applying for ~~certification~~ any certifications for a period of twelve (12) months;

(4) **Examination fee.** ~~submitting~~ The applicant must pay to the DEQ the appropriate ~~application filing and~~ examination fee; and

~~(5) providing DEQ a copy of a surety bond guaranteeing payment or performance in an amount required by the classification sought as specified in Section 8 of this Subchapter. The bond shall cover the costs to bring a faulty or improperly installed on-site sewage disposal system into compliance with this Chapter.~~

~~(A) The applicant must be named as the principal of the bond.~~

~~(B) The bond must be effective before the certification can be granted by DEQ and must remain in effect as long as the installer is certified.~~

~~(C) Payments made under the terms of the bond shall be made by the surety directly to DEQ. DEQ shall establish an account with these funds from which DEQ may pay for the repair of a faulty system and DEQ's costs associated with its response and oversight.~~

(5) **Joint inspections.** The applicant must complete at least two (2) joint field inspections with the DEQ. The systems inspected must:

(A) have been installed by the installer seeking certification; and

(B) be in the category of certification sought.

252:641-21-3. Certification renewal requirements

(a) **Renewal.** A certified installer may renew ~~an~~ unexpired ~~certification~~ certifications by submitting to DEQ the following by December 31:

(1) a completed renewal application provided by the DEQ;

(2) the required ~~renewal~~ annual certification fee; and

(3) documentation that the applicant completed ~~four (4) or more hours of~~ approved renewal training for that certificate year. Renewal training credit may be granted for courses or workshops of four (4) hours or more that have been approved in writing by the DEQ in advance.

(b) **Grace period.** There is a thirty-one-day grace period to renew expired certifications. During this grace period, a late fee will not be assessed and certified installers may continue to self-inspect.

(c) **Late renewals.** The applicant shall pay a Ten-Dollar ($10.00) late fee for renewal applications postmarked or received by the DEQ after January 31.

(d) **Failure to renew.** Any certification that has not been renewed within twelve (12) months of expiring may not be renewed. Such applicants must apply for a new certification.

252:641-21-8. Classifications [REVOKED]

~~There are three (3) classifications of on-site sewage disposal system installers: Class C, Class B and Class A.~~

~~(1) **Class C.** Class C certified installers are allowed to self-inspect and approve their own installations of individual and small public lift stations and subsurface absorption systems, excluding ET/A systems. However, Class C certified installers may not self-inspect and approve small public systems that have an average daily flow greater than five hundred (500) gallons per day. Class C applicants must provide a Five Thousand Dollar ($5,000.00) bond and meet all of the following Class C requirements:~~

~~(A) **Training.** Eight (8) hours of DEQ-approved classroom training in the basics of on-site sewage disposal system installation and inspection.~~

~~(B) **Examination.** Score at least seventy percent (70%) on the Class C examination.~~

~~(C) **Joint inspections.** Complete at least four (4) joint field inspections with the DEQ.~~

~~(2) **Class B.** Class B certified installers are allowed to self-inspect and approve their own installations of individual and small public subsurface absorption systems, ET/A systems, lagoons and lift stations. However, Class B certified installers may not self-inspect and approve small public systems that have an average daily flow greater than one thousand (1,000) gallons per day. All Class B applicants must provide a Seven Thousand, Five Hundred Dollar ($7,500.00) bond and meet all of the Class C certification requirements along with the following additional Class B requirements:~~

~~(A) **Training.** Four (4) hours of DEQ approved classroom training in the installation of ET/A systems and lagoons.~~

~~(B) **Examination.** Score at least seventy percent (70%) on the Class B examination.~~

~~(3) **Class A.** Class A certified installers are allowed to self-inspect and approve their own installations of individual and small public subsurface absorption systems, ET/A systems, lagoons, lift stations and aerobic systems. However, Class A certified installers may not self-inspect and approve small public systems that have an average daily flow greater than one thousand, five hundred (1,500) gallons per day. All Class A applicants must provide a Ten Thousand Dollar ($10,000.00) bond and meet all of the Class B certification requirements along with the following additional Class A requirements:~~

~~(A) **Training.** Four (4) hours of DEQ approved classroom training in the installation of aerobic systems.~~

~~(B) **Examination.** Score at least seventy percent (70%) on the Class A examination.~~

252:641-21-12. Duties and responsibilities

(a) **Systems installed.** For each ~~system~~ new installation, modification or repair self-inspected and approved a certified installer shall comply with the following:

(1) **Notify DEQ.** The installer must give DEQ an opportunity to inspect a portion of the system to ascertain that the certified installer continues to meet certification requirements. The certified installer shall notify the local DEQ office, before construction begins, of the time ~~and~~ , date and location that an individual or small public sewage ~~disposal~~ treatment system will be installed ~~or~~ , modified or repaired. The installer shall pay DEQ a Thirty-Dollar ($30.00) fee each time the installer fails to notify the DEQ either prior to or on the day construction begins.

(2) **Submittals to DEQ.** Within ten (10) working days after the work has been completed, the certified installer shall submit an accurate, completed DEQ Form 641-576A to the local DEQ office. The installer shall pay DEQ a Thirty-Dollar ($30.00) fee each time the installer fails to submit a completed DEQ Form 641-576A within ten (10) days of completing the work.

(b) **Record keeping.** Certified installers are responsible for maintaining their own records for:

(1) each system installed; and

(2) all training classes completed.

(c) **Identification.** Each certified installer shall present their identification card to DEQ personnel upon request.

252:641-21-13. Certification suspension and revocation

(a) ~~**Suspension**~~ **Reasons for suspension or revocation.** After notice and opportunity for hearing, the DEQ may suspend or revoke ~~certification~~ an installer's certification(s) for:

(1) procedural violations such as allowing the bond to expire, failing to pay fees, failing to complete continuing education requirements or other related procedural issues;

(2) gross inefficiency or incompetence;

(3) any violation of the Environmental Quality Code, this Chapter, or any final DEQ order; or

(4) dishonesty, fraud or misrepresentation to DEQ.

(b) **Suspension.** Any person whose ~~certification~~ certification(s) is suspended by the DEQ:

(1) may not self-inspect and approve any on-site sewage ~~disposal~~ treatment systems until their ~~certification~~ certification(s) has been reinstated or they have received a new ~~certification~~ certification(s).

(2) may not apply to become certified in any additional category(ies) during the suspension period.

(~~2~~3) may apply for reinstatement of their ~~certification~~ certification(s) at any time during the twelve (12) months following the date of their suspension by:

(A) correcting any deficiency(ies);

(B) paying any outstanding fees or fines owed to DEQ including the reinstatement fee of Ten Dollars ($10.00);

(C) meeting the renewal requirements of Section 3 of this Subchapter if the reinstatement takes place during the following certification period; and

(D) being in compliance with all final DEQ rules and orders.

(c) **Revocation.** Any individual ~~whose certification has been~~ who has had their certification(s) revoked by the DEQ:

(1) may not self-inspect and approve any on-site sewage treatment system; and

(2) must wait one (1) year from the date of revocation before filing an application for a new ~~certificate~~ certification(s).

SUBCHAPTER 22. CERTIFICATION FOR PERSONS WHO PERFORM SOIL PROFILE DESCRIPTIONS

252:641-22-1. General provisions

(a) **Applicability.** Any person who performs a soil profile description to be used to design an on-site sewage ~~disposal~~ treatment system must first be certified by the DEQ. Persons can become certified by the DEQ to perform soil profile

descriptions by complying with the requirements of this subchapter.

(b) **Compliance.** Certified soil profilers shall comply with all the rules in this Chapter.

(c) **Certification Period.** Certifications shall be effective from January 1 or the day of certification, through December 31, unless modified by an Administrative Proceeding.

(d) **Specified dates.** If any date specified in this Subchapter falls on a weekend or holiday, the date of the following working day shall be the effective date.

(e) **Application time frame.** Applications will become void if the applicant fails to meet all certification requirements within one hundred eighty (180) days of being notified of any deficiencies. All fees paid are non-refundable when an application is voided.

252:641-22-3. New certification application requirements

An applicant may, at any time, apply to become a certified soil profiler by doing the following:

(1) **Application.** ~~submitting~~ The applicant must submit to the DEQ a completed and signed DEQ Form 641-011 "Certified Soil Profiler Application";

(2) **Training.** ~~completing~~ The applicant must complete the required ~~twenty-four (24) hours of~~ DEQ training;

(3) **Examination and fee.** ~~passing~~ The applicant must pay the examination fee and pass the examination for becoming a soil profiler. Any applicant found cheating on an examination will not be certified and shall be prohibited from applying for certification for a period of twelve (12) months;

(4) **Joint profiles.** ~~performing~~ The applicant must complete at least four (4) joint soil profile descriptions with the DEQ;

(5) **Annual fee.** ~~submitting~~ The applicant must pay to the DEQ the ~~application~~ annual certification fee; and

(6) **Financial assurance.** The applicant must document financial assurance by providing DEQ with one of the following:

(A) **Surety bond.** ~~providing DEQ~~ The applicant may document financial assurance by submitting to DEQ a copy of a surety bond guaranteeing payment or performance in the amount of Ten Thousand Dollars ($10,000.00)~~. The bond shall cover the costs to bring an on-site sewage disposal system into compliance when the system was improperly designed using an inaccurate soil profile description.~~ with the following stipulations:

(~~A~~i) the applicant must be named as the principal of the bond and DEQ must be named as obligee of the bond.

(~~B~~ii) The bond must be effective before the certification can be granted by DEQ and must remain in effect as long as the soil profiler is certified. Upon notification to DEQ that a bond is no longer in effect, DEQ may immediately begin the process to suspend the profiler's certification.

(~~C~~iii) Payments made under the terms of the bond shall be made by the surety directly to DEQ. DEQ shall establish an account with these funds ~~from which DEQ may pay for the repairs of a faulty system designed with an inaccurate soil profile description and DEQ's costs associated with its response and oversight.~~ to cover the costs:

(I) to bring an on-site sewage treatment system into compliance when the system was improperly designed using an inaccurate soil profile description; and

(II) for DEQ's response and oversight.

(B) **Affidavit for tribal and governmental soil testers.** The applicant may document financial assurance by submitting to DEQ an affidavit that:

(i) the soil profiler is working solely for a federally recognized tribe or a governmental entity; and

(ii) the entity will pay for the repair or replacement of improperly designed systems.

252:641-22-4. Certification renewal requirements

(a) **Renewal.** A certified soil profiler may renew an unexpired certification by ~~submitting to DEQ~~ doing the following by December 31:

(1) **Application.** The soil profiler must submit to DEQ a completed renewal application provided by the DEQ;

(2) **Annual fee.** The soil profiler must pay to DEQ the required ~~renewal~~ annual certification fee;

(3) **Renewal training.** The soil profiler must submit to DEQ documentation that the applicant completed ~~four (4) or more hours of~~ approved renewal training for that certificate year. Renewal training credit may be granted for courses or workshops of four (4) hours or more that have been approved in writing by the DEQ in advance~~.~~;

(4) **Texturing samples.** The soil profiler must complete the analysis of any soil samples issued to them by the DEQ for texturing. All results must be submitted to DEQ on DEQ Form 641-006 "Soil Texturing Worksheet" within fourteen (14) days of receiving the soil samples; and

(5) **Annual texturing test.** The soil profiler shall pass the annual texturing test.

(b) **Late fees.** The ~~applicant~~ soil profiler shall pay a Ten Dollar ($10.00) late fee for renewal applications postmarked or received by the DEQ after January 31.

(c) Failure to renew. Any certification that has not been renewed within twelve (12) months of expiring may not be renewed. Such applicants must apply for a new certification.

252:641-22-6. Certification suspension and revocation

(a) **~~Suspension~~ Reasons for suspension or revocation.** After notice and opportunity for hearing, the DEQ may suspend or revoke certification for:

(1) procedural violations such as allowing the bond to expire, failing to pay fees, failing to complete continuing education requirements or other related procedural issues;

(2) gross inefficiency or incompetence;

(3) any violation of the Environmental Quality Code, this Chapter, or any final DEQ order; or

(4) dishonesty, fraud or misrepresentation to DEQ.

(b) **Suspension.** Any person whose certification is suspended by the DEQ:

(1) may not perform soil profile descriptions for use in designing on-site sewage ~~disposal~~ treatment systems until their certification has been reinstated or they have received a new certification.

(2) may apply for reinstatement of their certification at any time during the twelve (12) months following the date of their suspension by:

(A) correcting any deficiency(ies);

(B) paying any outstanding fees or fines owed to DEQ including the reinstatement fee of Ten Dollars ($10.00);

(C) meeting the renewal requirements of Section 4 of this Subchapter if the reinstatement takes place during the following certification period; and

(D) being in compliance with all final DEQ rules and orders.

(c) **Revocation.** Any individual whose certification has been revoked by the DEQ must wait one (1) year from the date of revocation before filing an application for a new certificate.

SUBCHAPTER 23. FEES

252:641-23-1. Requested ~~Services~~ services fees

(a) ~~**Applicability**~~ **Fees.** The following fee schedule applies to services provided by the Environmental Complaints and Local Services Division (ECLS) of the DEQ~~:~~.

(1) Soil ~~percolation test or soil~~ profile description ~~— $55.00~~:

(A) When DEQ augers test holes - $125.00

(B) When pits are provided by applicant - $50.00

(2) DEQ authorization or permit to:

(A) construct ~~an~~ a new on-site sewage ~~disposal~~ treatment system with a design flow:

(i) equal to or less than one thousand five hundred (1,500) gallons per day - ~~$30.00~~ $85.00

(ii) greater than one thousand five hundred (1,500) gallons per day - $200.00

(B) modify an existing on-site sewage treatment system - $50.00

(3) ~~Permit to construct an~~ Plan review of an alternative on-site sewage ~~disposal~~ treatment system - ~~$30.00~~ $75.00

(4) Existing system evaluation report - ~~$60.00~~ $125.00

(b) **Waiver of fees.**

(1) **Indigents and nonprofit organizations.** The DEQ may waive fees for indigents and nonprofit organizations. Requests for a waiver of fees under this paragraph shall be decided by the Director of the Environmental Complaints and Local Services Division of the DEQ.

(2) Investigation of complaints. The DEQ may perform a ~~soil percolation test or a~~ soil profile description as a part of an investigation of a system known to be malfunctioning or a system which is the subject of a complaint filed by a third party. No fee shall be charged as a part of this investigation.

(3) **Standardized alternative systems.** DEQ shall waive the plan review fee for standardized alternative systems.

252:641-23-2. Certified ~~individual~~ sewage ~~disposal~~ treatment system installer fees

(a) **Certification fees.**

(1) ~~Application filing and examination fee:~~ Annual certification fee - $150.00

~~(A) Class A - $100.00~~

~~(B) Class B - $ 75.00~~

~~(C) Class C - $ 50.00~~

(2) ~~Certification renewal fee - $50.00~~ Examination fee for each category of certification - $100.00

(3) Late fee - $10.00

(4) Reinstatement fee - $10.00

(5) Failure to notify fee - $30.00

(6) Failure to submit paperwork timely fee - $30.00

~~(b) **Upgrades.** Once certified, an installer may move up through the classes at any time by completing the required additional training, taking the appropriate examination and paying the applicable fee, as follows:~~

~~(1) Class B to a Class A, fee of $25.00~~

~~(2) Class C to a Class B, fee of $25.00~~

~~(3) Class C to a Class A, fee of $50.00~~

(~~c~~b) **Nonrefundable.** Fees are nonrefundable.

252:641-23-3. Certified soil profiler fees

(a) **Certification fees.**

(1) ~~Application~~ Annual certification fee - $50.00

(2) ~~Certification renewal~~ Examination fee - $50.00

(3) Late fee - $10.00

(4) Reinstatement fee - $10.00

(5) Failure to notify fee - $30.00

(b) **Nonrefundable.** Fees are nonrefundable.

APPENDIX A. MINIMUM LOT SIZE REQUIREMENTS FOR ON-SITE SEWAGE DISPOSAL SYSTEMS [REVOKED]

APPENDIX A. MINIMUM LOT SIZE REQUIREMENTS FOR ON-SITE SEWAGE DISPOSAL SYSTEMS [NEW]

TYPE OF TREATMENT SYSTEM	MINIMUM LOT SIZE*	
	With private well	*With public water*
Aerobic system with land application	3/4 acre	1/2 acre
Evapotranspiration/Absorption (ET/A) system	1 acre	1 acre
Subsurface absorption system in soil with a: (a) Percolation rate of 30 minutes or less, or (b) Group 2 soil classification.	3/4 acre	1/2 acre
Subsurface absorption system in soil with a: (a) Percolation rate of more than 30 minutes, or (b) Group 3 or 4 soil classification.	1 acre	1 acre
Lagoon	2 1/2 acres	2 1/2 acres

*The minimum lot size excludes road easements.

APPENDIX B. SOIL GROUPS [REVOKED]

APPENDIX B. SOIL GROUPS [NEW]

SOIL GROUP	SOIL TEXTURES
1	Coarse sand, loamy coarse sand, and all soils with a rock fragment content of > 35% by volume having continuous voids > 1 mm.
2	Sand, sandy loam, and loamy sand (not including coarse sand or loamy coarse sand).
3	Sandy clay loam, loam, silt loam, and silt.
4	Sandy clay without slickensides with moderate and strong soil structure, clay loam, and silty clay loam.
5	Sandy clay with slickensides or weak soil structure, clay, and silty clay.

APPENDIX C. PIPE SPECIFICATIONS FOR ON-SITE SEWAGE DISPOSAL SYSTEMS [REVOKED]

APPENDIX C. PIPE SPECIFICATIONS FOR ON-SITE SEWAGE DISPOSAL SYSTEMS [NEW]

Pipe used in on-site sewage treatment systems must meet or exceed the specifications in this Appendix.

USE	MINIMUM PIPE SIZE	ACCEPTABLE MATERIALS[1]
Discharge line from lift stations or other pressurized effluent waste water lines	1" Diameter	Polyvinyl Chloride (PVC): ASTM D2846, ASTM F441, ASTM F442 or Schedule 40
Building sewer and other solid pipe when used for single family residences only[2]	3" Diameter	Acrylonitrile butadiene styrene (ABS): ASTM D2661, ASTM D2751, ASTM F628 or Polyvinyl chloride (PVC): ASTM D2665, ASTM D2949, ASTM 3033, ASTM 3034, ASTM F789
Building sewer and other solid pipe when the average flow is 2000 gpd or less[2]	4" Diameter	
Building sewer and other solid pipe when the average flow is greater than 2000 gpd[2]	6" Diameter	
Perforated pipe when used in a subsurface treatment field	3" Diameter	Polyethylene (PE): ASTM F405, ASTM F810, ASTM D3350 or Polyvinyl chloride (PVC): ASTM D2729, ASTM D3034, ASTM D3350
Chambers when used in a subsurface treatment field	22" Wide 10" Louver Height Storage capacity of 5 gallons per linear foot	Molded rigid plastic, arch shaped, hollow structure with an exposed bottom area and louvered sidewall for infiltration of effluent into adjoining bottom and sidewall soil areas, designed with a minimum crush strength that will withstand normal residential activities when covered with soil and to prevent the infiltration of soil into the chamber area.

(1) If an ASTM number is specified, then the identification number must be stamped on the pipe.
(2) The diameter of the pipe connecting the building sewer to the septic tank may not be smaller than the building sewer.

APPENDIX D. SAMPLING FREQUENCY & TESTING REQUIREMENTS FOR ON-SITE SURFACE APPLICATION OF TREATED SEWAGE [REVOKED]

APPENDIX D. SAMPLING FREQUENCY & TESTING REQUIREMENTS FOR ON-SITE SURFACE APPLICATION OF TREATED SEWAGE [NEW]

The following tests shall be performed on the effluent and the specified criteria met for aerobic sewage treatment systems that utilize surface application of treated wastewater:

REQUIRED TESTS	MINIMUM STANDARDS	FREQUENCY
Free-Chlorine Residual or Fecal Coliform	1 mg/liter in or after the pump tank or <200MPN/1000 ml in or after the pump tank	2 per year, to be performed every 6 months
BOD & TSS	Less than 65 mg/liter	1 per year

APPENDIX E. SEPARATION DISTANCE REQUIREMENTS FOR ON-SITE SEWAGE DISPOSAL SYSTEMS [REVOKED]

APPENDIX E. SEPARATION DISTANCE REQUIREMENTS FOR ON-SITE SEWAGE DISPOSAL SYSTEMS [NEW]

THE SEPARATION DISTANCES ARE SET OUT IN FEET. The numbers in parentheses correspond with the numbers listed below the chart.

	Aerobic Treatment Unit, TrashTank, Septic Tank & Lift Station	Perforated Pipe or Chamber	Solid Pipe	Lagoons	Sprinkler Heads	Sprinkler Spray
Private well or surface water supply	50 (1a)	50(1a)	50(2)	50(1b,3)	50 (1a)	15
Public water supply water well	300	300	50	300(3)	300	15
Buildings	5	5	NA	50(4,5)	NA	NA
Other structures(6)	NA(7)	5	(8)	NA	NA	NA
Waterline	5	15	10(9)	15(3)	15	NA
Property line	5	5	5	10(4)	5	5
Impoundment or stream(10)	15	15	NA	15(4)	15	15
French drain (curtain drain)	15	15	NA	15(4)	NA	15

(1) (a)Distances shall be one hundred feet (100') if the soil percolates one inch (1") in less than five (5) minutes.
(b)Distances shall be one hundred feet (100') if the ground slopes toward the water supply.
(2) Distances may be reduced to ten feet (10') if Schedule 40 or cast iron pipe is used.
(3) The distance shall be measured horizontally from the center line of the nearest dike.
(4) The distance shall be measured from the outside base of the nearest dike.
(5) This only applies to residences that are not located on the owner's property.
(6) "Other structures" includes but is not limited to driveways, parking lots and paved areas.
(7) If septic tanks are located under paved areas, access to all manhole/cleanout openings shall be provided.
(8) If solid pipes are constructed under roadways or driveways, the pipe shall be Schedule 40, cast iron or sleeved for a distance of 10 feet either side of the area.
(9) Ten feet (10') horizontal or two feet (2') vertical separation shall be maintained between any water line and solid pipe. When proper horizontal and vertical separation cannot be obtained then the solid pipe shall be constructed of schedule 40 or cast iron and shall be installed so the joints of both the water line and the solid pipe are as far apart as possible.
(10)This includes the top bank of any stream or the normal pool elevation of an impoundment that is not used for a surface water supply.

APPENDIX F. SMALL PUBLIC SYSTEMS SEWAGE FLOW [REVOKED]

APPENDIX F. SMALL PUBLIC SYSTEMS SEWAGE FLOW [NEW]

For Use in Calculating the Design Flow for Small Public Facilities:

Type of Facility	*Sewage Flow Gallons/Day*
Boarding Schools (per room)	50
Churches without Kitchen (per sanctuary seat) Churches with Kitchen (per sanctuary seat)	4 6
Condominiums, Apartments, or Townhouses (one or two bedrooms) Condominiums, Apartments, or Townhouses (each additional bedroom)	200 75
Construction Sites (per worker)	50
Country Clubs (per member)	25
Day Care with Kitchen (per child) Day Care without Kitchen (per child)	25 15
Factories (per person per shift)	15
Hospitals (per bed)	200
Hotels and Motels (per bed)	75
Lounges (per seat)	10
Mobile Home Parks (one or two bedroom mobile homes) Mobile Home Parks (three or more bedroom mobile homes)	200 275
Movie Theaters (per seat)	5
Nursing Homes (per bed)	100
Office Buildings without Food Service (per occupant) Office Buildings with Food Service (per occupant)	5 10
Parks with Bathhouse (per person) Parks without Bathhouse (per person)	15 10
Public Laundries (per machine)	250
Restaurants (per seat) Fast Food Restaurants (per seat)	35 15
RV Parks (per space)	50
Schools with Food Service (per student) Schools without Food Service (per student)	25 15
Service Stations (per vehicle)	10
Stores (per restroom)	200
Swimming Pool Bathhouses (per person)	10
Youth Camps (per camper)	30

*This table lists estimated flows for the facility types. Actual flow data may be used to size on-site sewage treatment systems when approved by the DEQ.

[OAR Docket #04-835; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 648. LAND APPLICATION OF BIOSOLIDS

[OAR Docket #04-836]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
Subchapter 1. General Provisions [REVOKED]
252:648-1-1 [REVOKED]
252:648-1-2 [REVOKED]
252:648-1-3 [REVOKED]
252:648-1-4 [REVOKED]
252:648-1-5 [REVOKED]
252:648-1-5 [REVOKED]
Subchapter 3. Permitting [REVOKED]
252:648-3-1 [REVOKED]
252:648-3-2 [REVOKED]
252:648-3-3 [REVOKED]
252:648-3-4 [REVOKED]
252:648-3-5 [REVOKED]
252:648-3-6 [REVOKED]
252:648-3-7 [REVOKED]
252:648-3-8 [REVOKED]
252:648-3-9 [REVOKED]
252:648-3-10 [REVOKED]
Subchapter 5. Land Application of Biosolids [REVOKED]
252:648-5-1 [REVOKED]
252:648-5-2 [REVOKED]
252:648-5-3 [REVOKED]
252:648-5-4 [REVOKED]
252:648-5-5 [REVOKED]
Subchapter 7. Closure and Remediation [REVOKED]
252:648-7-1 [REVOKED]
AUTHORITY:
Environmental Quality Board and Water Quality Management Advisory Council powers and duties, 27A O.S. §§ 2-2-101 and 2-2-201 and the Oklahoma Pollution Discharge Elimination System Act, 27A O.S., §2-6-201 *et seq.*
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The purpose of the proposed revocation is to combine two existing rule chapters that both address parts of the NPDES/OPDES program into one chapter. This will aid in the understanding of the NPDES/OPDES program by the regulated community by placing all applicable requirements in one chapter. This change was originally suggested by municipalities.

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 11, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

252:648-1-1. Purpose [REVOKED]

~~(a) **Purpose.** This Chapter establishes the requirements for land application of biosolids and the preparation and firing of biosolids in a biosolids incinerator. This chapter applies to any person or entity that land applies biosolids or prepares it for firing in a sewage sludge incinerator.~~

~~(b) **Exclusions.** This chapter does not apply to the following:~~

~~(1) Septage. See OAC 252:645.~~

~~(2) biosolids pilot studies that are conducted by a qualified research institute familiar with the crops and soils of this state for the beneficial use of biosolids through land application. Such studies shall be subject to conditions imposed by the DEQ, including:~~

~~(A) the limitation of the total amount of biosolids used or disposed must be no more than 25 dry tons for any one project or 50 dry tons for all pilot studies approved by the DEQ for the same institute in the same year;~~

~~(B) compliance with:~~

~~(i) The metal ceilings established in Table 1 of 40 CFR § 503.13(b);~~

~~(ii) One of the vector attraction reduction alternatives; and~~

~~(iii) The pathogen reduction requirements of 40 CFR § 503.32(a);~~

~~(C) written approval from the DEQ Executive Director prior to the commencement of operations;~~

~~(D) the period during which biosolids may be applied to the land shall be eighteen 18 months or less, unless extended by the DEQ;~~

~~(E) notification to the DEQ of the cessation of land application at the site; and~~

~~(F) periodic reporting.~~

~~(3) Biosolids co-fired in an incinerator with other wastes or for the incinerator in which biosolids and other wastes are co-fired are regulated under the appropriate Air Quality Rules. Other wastes do not include auxiliary fuel, as defined in 40 CFR § 503.41(b), fired in a sewage sludge incinerator.~~

~~(4) Sludge generated at an industrial facility during the treatment of industrial wastewater, including sludge generated during the treatment of industrial wastewater combined with domestic sewage.~~

~~(5) Use or disposal of biosolids:~~

~~(A) determined to be hazardous in accordance with 40 CFR Part 261. Biosolids that are determined to be hazardous must be disposed of in a manner in accordance with the Oklahoma Hazardous Waste Act and rules promulgated thereunder.~~

~~(B) of ash generated during the firing of biosolids in a sewage sludge incinerator;~~

~~(C) grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.~~

~~(6) Biosolids with a concentration of PCBs equal to or greater than 10 milligrams per kilogram (10.0 mg\kg) of total solids (dry weight basis) may not be land applied under this Chapter. Disposal shall be in accordance with OAC 252:510 ("Municipal Solid Waste Landfill" Rules) and applicable federal requirements under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*~~

252:648-1-2. Definitions [REVOKED]

~~Terms used in this Chapter shall be defined as set forth in the Oklahoma Environmental Quality Code, and where applicable shall be as defined in federal regulations incorporated by reference, unless the context clearly requires otherwise. Any technical term not defined in the Oklahoma Environmental Quality Code or by this Chapter shall be defined by its generally accepted scientific meaning or its standard dictionary meaning. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~**"Beneficial use"** means the use of biosolids or wastewater through land application for the purpose of soil conditioning, or crop or vegetative fertilization, or erosion control in a manner which does not pollute or tend to pollute the environment, pose a risk to human health or cause any deterioration of land surfaces, soils, surface waters or groundwater.~~

~~**"Biosolids"** means primarily organically treated wastewater materials from municipal wastewater treatment plants that are suitable for recycling as a soil amendment. This term is within the meaning of "sludge" referenced in 27A. O.S. § 2-6-101(11).~~

~~**"Generator"** or **"operator"** means authorized person under whose ownership or management authority, biosolids are used or disposed.~~

~~**"Heavy Metal"** means arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, or zinc.~~

~~**"Land application"** means the application of biosolids onto a land surface; injection below land surface; or spreading biosolids onto land surface followed by incorporation into the soil. Land application does not include the disposal of biosolids in a municipal solid waste landfill permitted by the DEQ.~~

~~**"Listed metal"** means those metals listed in Tables I, II, and III of 40 CFR Part 503.13~~

~~**"Loading rate"** means the amount (concentration or mass) of constituents or parameters applied to a unit area per application.~~

~~**"Oklahoma Water Quality Standards"** means the Oklahoma Water Resources Board rules (OAC 785:45) which classify waters of the state, designate beneficial uses for which the various waters of the State shall be maintained and protected, and prescribe the water quality required to sustain designated uses.~~

252:648-1-3. Incorporation of EPA regulations by reference [REVOKED]

~~(a) The following provisions of 40 CFR that are applicable to biosolids are hereby incorporated by reference, subject to any modifications and additional requirements specified in this Chapter:~~

~~(1) The following Sections from Part 503, Subpart A [General Provisions]:~~

~~(A) § 503.1 [Purpose and applicability]~~

~~(B) § 503.2 [Compliance period]~~

~~(C) § 503.3 [Permits and direct enforceability]~~

~~(D) § 503.4 [Relationship to other regulations]~~

~~(E) § 503.5 [Additional or more stringent requirements]~~

~~(F) § 503.6(a) (e),(g) (j) [Exclusions]~~

~~(G) § 503.7 [Requirement for a person who prepares biosolids]~~

~~(H) § 503.8 [Sampling and analysis]~~

~~(I) § 503.9 [General definitions]~~

~~(2) The following Sections from Part 503, Subpart B [Land Application]:~~

~~(A) § 503.10(a),(b)(1)&(2),(e),(f),(g) [Applicability]~~

~~(B) § 503.11 [Special definitions]~~

~~(C) § 503.12 [General requirements]~~

~~(D) § 503.13 [Pollutant limits]~~

~~(E) § 503.14 [Management practices]~~

~~(F) § 503.15 [Operational standards -- pathogens and vector attraction reduction]~~

~~(G) § 503.16(a) [Frequency of monitoring]~~

~~(H) § 503.17(a) [Recordkeeping]~~

~~(I) § 503.18 [Reporting]~~

~~(3) The following Sections from Part 503, Subpart D [Pathogens and Vector Attraction Reduction]:~~

~~(A) § 503.30 [Scope]~~

~~(B) § 503.31 [Special definitions]~~

~~(C) § 503.32(a), (b) [Pathogens]~~

~~(D) § 503.33(a), (b)(1) (11) [Vector attraction reduction]~~

~~(4) The following Sections from Part 503 Subpart E [Incineration]~~

~~(A) § 503.40 [Applicability]~~

~~(B) § 503.41 [Special definitions]~~

~~(C) § 503.42 [General requirements]~~

~~(D) § 503.43 [Pollutant (Metal) limits]~~

~~(E) § 503.44 [Operational standard – total hydrocarbons]~~
~~(F) § 503.45 [Management practices]~~
~~(G) § 503.46 [Frequency of monitoring]~~
~~(H) § 503.47 [Recordkeeping]~~
~~(I) § 503.48 [Reporting]~~
~~(5) The following Appendices from Part 503:~~
~~(A) Appendix A [Procedure to determine the annual whole biosolids application rate for a biosolids]~~
~~(B) Appendix B [Pathogen treatment processes]~~
~~(b) For purposes of interpreting EPA regulations incorporated by reference, "Administrator" and "Regional Administrator" shall mean the Executive Director of the DEQ when referring to the executive capacity of the same and shall mean the Water Quality Management Council and the Environmental Quality Board when referring to the rulemaking capacity of the same, "Permitting authority" shall mean the DEQ, and "State" shall mean the state of Oklahoma.~~

252:648-1-4. Severability [REVOKED]

~~The provisions of this Chapter are severable, and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions.~~

252:648-1-5. Fees for permits [REVOKED]

~~The annual permit fee shall be:~~
~~(1) Population Range 0-100 – $210~~
~~(2) Population Range 101-500 – $235~~
~~(3) Population Range 501-1,000 – $410~~
~~(4) Population Range 1,001-5,000 – $710~~
~~(5) Population Range 5,001+ – $810~~
~~(b) Fees are due upon receipt of an invoice mailed by the DEQ annually. Upon payment of the annual fee, the permit shall continue in effect for one year but in no case past its expiration. Failure to pay the fee may result in the suspension or termination of the permit.~~

252:648-1-6. Financial assurance [REVOKED]

~~(a) If the applicant is not a city, town or other public entity, the applicant shall submit the following information to the DEQ:~~
~~(1) Expected costs for operation and maintenance, replacement and closure;~~
~~(2) Continued existence and financial accountability; and that~~
~~(3) Assurance that provisions have been made for continued existence of the operating entity for the expected life of the facility.~~
~~(b) Continued existence may be demonstrated in one of the following fashions:~~
~~(1) The applicant may be a property owners' association or a nonprofit corporation established under the laws of the State of Oklahoma. The association must have the legal authority to own and manage the land application system including the authority to set and collect fees from users for operation and maintenance of the system. The bylaws of the entity must contain a provision that dissolution shall not occur until the system is either closed in accordance with applicable DEQ rules or transferred to another viable operating entity. The instrument creating the association shall be filed in the office of the county clerk where the property is located; or~~
~~(2) The applicant must provide proof of a sufficient amount on deposit to the credit of a trust, the powers of which are to operate and maintain the wastewater system for the expected life of the facility; or~~
~~(3) Other proof of financial viability, such as the issuance of a bond or insurance contract covering the operation and maintenance of the wastewater system for the life of the system may be submitted to DEQ for approval; and~~
~~(c) Costs for closure of the wastewater system as required by law must be included in any funding plan.~~
~~(d) If the information fails to demonstrate the on-going viability of the operation, the application will be denied.~~

SUBCHAPTER 3. PERMITTING [REVOKED]

252:648-3-1. Permit required [REVOKED]

~~(a) **Applicant.** Any person who intends to land apply biosolids or incinerate biosolids shall obtain a permit.~~
~~(b) **Uniform permitting.** In addition to the requirements of the Code and this Chapter, all applicants seeking permits or other authorizations are subject to the Uniform Permitting Act, Title 27A O.S. § 2-14-101 *et seq.*, and the rules promulgated thereunder. This Chapter contains the standards to be met.~~

252:648-3-2. Time for filing application [REVOKED]

~~Applications for authorization of land disposal of biosolids as part of a discharge permit and for biosolids only facilities shall be filed within the time periods specified in rules promulgated under 27A O.S. § 2-14-101 *et seq.*~~

252:648-3-3. Permit applications [REVOKED]

~~All permit applications shall be typed or computer printed and include:~~
~~(1) the name, address, and telephone of the applicant or the applicant's authorized representative;~~
~~(2) name, mailing address, and telephone number of the generator or operator and the land applier, if different, and contact person from each source;~~
~~(3) a brief description of the biosolids including a list of the major commercial or industrial facilities that discharge to the municipal treatment system;~~
~~(4) a description of disposal practices and locations of any sites for transfer of the biosolids for treatment, land application, and/or disposal;~~
~~(5) laboratory test results of a representative soil sample from each proposed site in the permit application. The composite soil samples shall be tested, and background levels set, for the metals listed in Tables 1 and 3 of 40 CFR~~

~~§ 503.13(b), pH, and the nutrients - nitrogen (N), ammonia (NH_4), nitrates (NO_3), potassium (K) and phosphorus (P).~~

~~(6) a list of environmental state or federal permits held by the applicant.~~

252:648-3-4. Certification required [REVOKED]

~~When required by the DEQ, the operator must certify that the land application system has been designed according to OAC 252:656 and will be operated according to this chapter.~~

252:648-3-5. Sludge (biosolids) management plan [REVOKED]

~~A sludge management plan must be submitted with the permit application and include the following:~~

~~(1) a copy of the permit application;~~

~~(2) a breakdown of the anticipated types and volumes of biosolids generated;~~

~~(3) daily generation and annual production of semi-solids, solids as total volume and percent solids converted to dry tons;~~

~~(4) laboratory analysis including TCLP reports showing whether the biosolids are hazardous and the chemical and physical properties of biosolids to be land applied including concentrations of metals (listed and other), and any other pollutants;~~

~~(5) the amount of biosolids from each source expected to be used or disposed during each year of operation;~~

~~(6) a description of treatment methods including pathogen treatment and vector attraction reduction, including plant operational controls and record keeping forms that document biosolids treatment;~~

~~(7) identification of specific sites and identifying name for each;~~

~~(8) documentation of the applicant's right to use the site, including time restrictions, if any;~~

~~(9) land use descriptions of adjacent property;~~

~~(10) finding descriptions, legal descriptions, and latitude and longitude of each site;~~

~~(11) distance to nearest residence;~~

~~(12) topography of the site;~~

~~(13) soil types, permeability, infiltration and drainage patterns;~~

~~(14) proposed methods of field types, tillage, crop types and patterns, crop utilization, expected yield and final use of crop;~~

~~(15) irrigation practices, if any;~~

~~(16) depth to groundwater, including highest seasonal groundwater level, and any other data available;~~

~~(17) records of previous land application conducted at site, including data on the cumulative metal loading;~~

~~(18) results of any sampling, analyses or monitoring previously performed by the applicant at the site including metal and nutrient assessment based on an annual and lifetime use;~~

~~(19) access controls;~~

~~(20) narrative description of buffer zones and other methods to be used to control surface drainage, stormwater runoff, and erosion at each site;~~

~~(21) information on how biosolids will be transported from the point of generation to the land application or disposal including transfer and storage information and a map showing the location of sources of the biosolids, proposed transportation routes, and the location of related containment, storage, and transfer facilities;~~

~~(22) equipment to be used;~~

~~(23) narrative description of proposed land application method and related details including depth and frequency of incorporation or injection;~~

~~(24) estimated application rate, frequencies, rest periods between applications, and estimated life of the site. Include calculations on which estimates are based for cumulative metal loading rates;~~

~~(25) emergency response plan describing the actions to be taken by the applicant including notice for corrective action and remediation associated with spills and releases;~~

~~(26) NRCS soil map of each specific site which shows soil classification, suitability, and soil profiles to a depth of sixty (60) inches;~~

~~(27) highway map which shows the location of each specific site to communities, cities, towns schools, highway access roads and airports;~~

~~(28) quadrangle topographic map or maps that is an original U.S.G.S. 7.5 minutes series (or 15 minute series if the 7.5 series has not yet been printed) with the following clearly marked:~~

~~(A) boundary of the site;~~

~~(B) public water supply sources and treatment facilities;~~

~~(C) pipelines and utility easements;~~

~~(D) oil or gas wells or drilling sites;~~

~~(E) wellhead delineation areas;~~

~~(F) groundwater flow direction;~~

~~(G) waters of the state with special emphasis for "scenic rivers";~~

~~(H) parks, recreation areas and any government owned land dedicated for special purposes (for example, wildlife refuges)~~

~~(I) identification of the 100 year flood plain or floodway if it affects the proposed site;~~

~~(J) any area inhabited by an endangered or threatened wildlife or plant species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c); and~~

~~(K) any additional information determined necessary by the DEQ.~~

252:648-3-6. Permit modifications [REVOKED]

~~For all changes in permitted sites, methods of land application and treatment, the generator or operator must obtain a permit modification under the uniform permitting rules.~~

252:648-3-7. Restrictions applicable to all land application [REVOKED]

~~(a) **Storage time.** Except facilities permitted by the DEQ (excluding transfer stations), biosolids shall not be stored for greater than six (6) months without prior written approval from the DEQ and in no case longer than one (1) year.~~

~~(b) **Weather.** Do not land apply when the ground is frozen or saturated.~~

~~(c) **Endangered or threatened species.** Land application shall not occur if it is likely to adversely affect a threatened or endangered species listed under section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c), or the critical habitat of such species.~~

~~(d) **Topography.** A land application site shall have minimal slope or be contoured to prevent ponding and soil erosion. No application shall occur on land having a slope exceeding five percent (5%) but less than 10%unless erosion or runoff controls are implemented for liquid biosolids. Land having a slope greater than ten percent (10%) may be utilized for land application of dewatered and dried biosolids only with DEQ approval.~~

~~(e) **Off-site hauling.** A generator or operator shall prevent biosolids and mud from a land application site from being carried off-site. If necessary, biosolids hauling vehicles shall be cleaned prior to leaving the site and the rinse water disposed of in accordance with DEQ rules.~~

~~(f) **Manner.** Land apply sludge in a manner to prevent surface runoff and to control objectionable odors. Incorporate sludge into the soil before the end of each working day . Do not store or land apply, or allow to runoff, sludge or wastewater to wetlands or waters of the State. Discharges to waters of the State are prohibted without a discharge permit under OAC 252:605.~~

252:648-3-8. Laboratory analyses [REVOKED]

~~All laboratory analyses required by this Chapter shall be performed by laboratories certified by the DEQ.~~

252:648-3-9. Compliance required [REVOKED]

~~All permittees must operate the land application site pursuant to the terms of the DEQ issued permit.~~

252:648-3-10. Monitoring wells [REVOKED]

~~The DEQ may require monitor wells and boreholes in connection with the land application of biosolids. These wells shall be designed, constructed and plugged in accordance with OAC 785:35.~~

SUBCHAPTER 5. LAND APPLICATION OF BIOSOLIDS [REVOKED]

252:648-5-1. Prohibitions [REVOKED]

~~Surface disposal under Part 503, Subpart C of 40 CFR, is specifically prohibited. This prohibition shall not apply to disposal of biosolids in a municipal solid waste landfill that is permitted by the DEQ.~~

252:648-5-2. Land application exceptions and alternatives [REVOKED]

~~(a) **Metal and selenium concentration limits.** Municipal biosolids that exceeds the metal or selenium concentration limits set forth in 40 CFR, § 503.13(b)(1) [Table 1] shall not be land applied, but may be:~~

~~(1) incinerated at an incinerator permitted by the DEQ; or~~

~~(2) disposed at a solid waste landfill permitted by the DEQ for such waste disposal. Any biosolids disposed in such landfill shall meet the pathogen and vector reduction requirements of this Subchapter.~~

~~(b) **Notification.** A land applier must notify the DEQ by telephone within 24 hours and follow-up with a written report if the metal or selenium concentrations exceed those in 40 CFR § 503.13(b)(3) [Table 3] or risk the revocation of the land application permit.~~

252:648-5-3. Site use for land application [REVOKED]

~~(a) **One applier.** A land application site shall be used by only one land applier at a time unless the DEQ approves other users.~~

~~(b) **Subsequent use for land application.** The DEQ may approve a previously used land application site for subsequent land application.~~

~~(c) **Multiple sources.** A land applier who owns or operates more than one source facility or surface impoundment may utilize the same land application site for the application of biosolids from the multiple facilities or impoundments with prior written approval of the DEQ.~~

252:648-5-4. pH and nutrient limits [REVOKED]

~~(a) **pH limits.** Any site with soil having a natural pH of less than 5.5 shall not be used for the land application of biosolids unless the soil pH is amended prior to application of biosolids. Documentation of soil amendment must be placed in the land applier's compliance records.~~

~~(b) **Phosphorus and nitrogen.** Annual biosolids land application rate shall not exceed nitrogen and phosphorus rates for the crop grown and shall not be applied in rates that result in phytotoxicity.~~

252:648-5-5. Soil sampling [REVOKED]

~~(a) **Sample and analysis.** All background and annual soil sampling and analyses shall be of a composite sample taken from an area 80 acres or less in size for each site proposed or used for the land application of biosolids. The DEQ may approve larger sampling areas on a case-by-case basis. Soil testing procedures applicable for use in the local area in accordance with Oklahoma State University soil testing guidance or the local NRCS may be used.~~

~~(b) **Operational soil monitoring.** A land applier shall collect representative soil samples and have them analyzed as follows:~~

~~(1) For soil pH and the nutrients - nitrogen (N), ammonia (NH_4), nitrates (NO_3), potassium (K) and phosphorus (P) prior to the next annual application of biosolids;~~
~~(2) For metals in Table 3 of 40 CFR § 503.13(b) after every third year of use prior to the fourth year of use; and~~
~~(3) For all required background metals prior to the 4th year of biosolids application on each site.~~

SUBCHAPTER 7. CLOSURE AND REMEDIATION [REVOKED]

252:648-7-1. Site closure and remediation [REVOKED]

~~(a) **Closure.** A specific land application site may be closed as a land application site at any time by the land applier or by requirement of the DEQ.~~
~~(b) **Notice.** Prior to closure, a land applier shall provide a written notice to the DEQ of the proposed closure.~~
~~(c) **Remediation plan.** When site-specific testing and monitoring indicates the presence of pollution or deterioration of a site, the DEQ shall require an generator or operator to submit, receive approval of and perform a rememdiation plan.~~

[OAR Docket #04-836; filed 5-3-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 710. WATERWORKS AND WASTEWATER WORKS OPERATOR CERTIFICATION

[OAR Docket #04-837]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Certification
252:710-3-34 [AMENDED]
252:710-3-38 [REVOKED]
Subchapter 5. Duties and Responsibilities
252:710-5-58 [NEW]
252:710-5-59 [NEW]
Appendix B. Certificate Requirements (252:710-3-35) [REVOKED]
Appendix B. Certificate Requirements (252:710-3-35) [NEW]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and 59 O.S. §§ 1103 and 1104
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Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2004
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
This rulemaking is to revise and clarify the current operator certification rules. These rules amend existing procedures and requirements for the certification of operators of waterworks and wastewater works and operators of laboratories which do analyses for waterworks and wastewater works. New provisions include providing additional credit and/or options for experience under certain classifications, and duties and responsibilities for distribution and collection operator and distribution and collection technicians. The provision on reciprocity is being revoked because said provision is contained in state statutes at 59 O.S. § 1107.
CONTACT PERSON:
Chris Wisniewski, 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 11, 2004:

SUBCHAPTER 3. CERTIFICATION

252:710-3-34. Classes of certifications

(a) **Generally.** Owners shall place the direct supervision of their water/wastewater system or laboratory, including each treatment facility and/or distribution/collection system, under the responsible charge of a manager/superintendent/operator(s) holding a valid certification equal to or greater than the classification of the water/wastewater system or laboratory.
(b) **Operator(s) in Responsible Charge.** The manager/superintendent/ operator(s) in responsible charge or equivalent must hold a valid certification equal to or greater than the classification of their water/wastewater system, including each treatment facility and/or distribution/collection system.
(c) **Assistant superintendents or assistant supervisors.** Assistant superintendents, assistant supervisors, shift leaders or all other supervisors shall be certified at the same class as or one class less than the facility for which they are responsible.
(~~c~~d) **Others.** All other persons who make decisions regarding the daily operational activities of
(1) a public water system, water treatment facility and/or distribution system that will directly impact the quality and/or quantity of drinking water;
(2) a wastewater system, wastewater treatment facility and/or collection system; or

(3) program or maintain telemetry/SCADA systems and also make process control/system integrity decisions, including assistant superintendents or supervisors, shall be certified at the same class as or one class less than the facility for which they are responsible.

252:710-3-38. Reciprocity [REVOKED]

~~A person may apply for reciprocity by providing proof of a current, valid license or certificate from a state which accepts Oklahoma certifications and which has substantially similar standards for licensure.~~

SUBCHAPTER 5. DUTIES AND RESPONSIBILITIES

252:710-5-58. Distribution and collection operator

A person holding certification as a distribution and collection operator may perform all duties relating to the operation and maintenance of storage and distribution systems, including purchased-water systems and nontransient, noncommunity systems. A person holding certification as a distribution and collection operator may also perform all duties relating to the operation and maintenance of lagoon systems and collections systems.

252:710-5-59. Distribution and collection technician

A person holding certification as a distribution and collection technician may perform all duties relating to the operation and maintenance of storage and distribution systems, including purchased-water systems and nontransient, noncommunity systems. A person holding certification as a distribution and collection technician may also perform all duties relating to the operation and maintenance of lagoon systems and collection systems. All the duties must be performed under the direction and general supervision of an appropriately certified operator.

APPENDIX B. CERTIFICATE REQUIREMENTS (252:710-3-35) [REVOKED]

APPENDIX B. CERTIFICATE REQUIREMENTS (252:710-3-35) [NEW]

Table 1. WATERWORKS AND WASTEWATER WORKS OPERATORS CERTIFICATE REQUIREMENTS (252:710-3-35)

Classes	Experience[6]	Training[7]
Class A	Five years of waterworks or wastewater works operation including two years actual hands-on operating experience	200 hours of approved training, including at least 40 hours of DEQ approved courses in advanced treatment and managerial training or its approved equivalent[8]
Class B	Three years of waterworks or wastewater works operation including one year actual hands-on operating experience	100 hours of DEQ approved training or its approved equivalent
Class C	(a) For waterworks/wastewater works operators, one year of waterworks or wastewater works operation (b) For distribution/collection operators, one year of distribution/ collection operation	36 hours of DEQ approved training or its approved equivalent 36 hours of DEQ approved training or its approved equivalent
Class D	None	16 hours of approved training
Tech	None	8 hours of approved training

[6] Experience that is used to meet the experience requirement for any class of certification may not be used to meet the education or training requirements.

[7] Training credit will be granted only for courses or workshops listed as approved by the DEQ or for courses, workshops or alternative activities which have been approved in writing by the DEQ in advance.

[8] Approved equivalents are listed in 252:710-36.

Table 2. WATERWORKS OR WASTEWATER WORKS LABORATORY OPERATORS CERTIFICATE REQUIREMENTS (252:710-3-35)

Classes	Experience[9]	Training[10]
Class A	One year of waterworks or wastewater works laboratory operation; or	32 hours of DEQ approved Class B training and a Bachelor of Science degree in chemistry, microbiology, instrumental analysis or other field of science approved by the DEQ
	Three years of waterworks or wastewater works laboratory operation; or	Class B laboratory license plus an Associates Degree in chemistry, microbiology, instrumental analysis or other field of science approved by the DEQ
	Five years of waterworks or wastewater works laboratory operation	Class B laboratory license with at least three years of actual hands-on laboratory experience
Class B	Six months of waterworks or wastewater works laboratory operation	32 hours of DEQ approved Class B training and 32 hours of DEQ approved Class C training. An Associates Degree or greater in chemistry, biological sciences, biology, engineering, physical science, hydrology, geology, mathematics, environmental science, microbiology, toxicology, or civil, chemical, sanitary or environmental engineering may be substituted for the 32 hours of DEQ approved Class C training.
Class C	None	32 hours of DEQ approved Class C training

[9] Experience that is used to meet the experience requirement for any class of certification may not be used to meet the education or training requirements.

[10] Training credit will be granted only for courses or workshops listed as approved by the DEQ or for courses, workshops or alternative activities which have been approved in writing by the DEQ in advance.

[OAR Docket #04-837; filed 5-3-04]

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

[OAR Docket #04-789]

RULEMAKING ACTION:
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RULES:
Subchapter 1. General Provisions
360:10-1-2. [AMENDED]
Subchapter 3. Administration of Plans
360:10-3-3.5. [AMENDED]
360:10-3-20. [AMENDED]
360:10-3-24. [AMENDED]
360:10-3-25. [AMENDED]
360:10-3-26. [AMENDED]
Subchapter 5. Coverage and Limitations
Part 3. Health Benefit Plans
360:10-5-16. [AMENDED]
Part 5. Life Benefits
360:10-5-34. [AMENDED]
Part 9. Dental Benefits, Limitations, and Exclusions
360:10-5-55. [AMENDED]
360:10-5-56. [AMENDED]
360:10-5-61. [AMENDED]
Part 13. Coordination of Health and Dental Benefits
Subchapter 7. Termination of Benefits
360:10-7-1. [AMENDED]
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74 O.S., Sections 1304, 1306 and 1344
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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, 2005:

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 member makes are not the same as those entered into payroll for deduction from the member's paycheck. This does not include untimely member coverage elections or member misrepresentation. When such an administrative error results in underpaid premiums, full payment to the Board shall be required before coverage elected by the 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 [19th] 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 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. 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.

(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. The employee 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. Coverage is limited to ninety [90] days following the date of suspension or the duration of the administrative appeals process, whichever is greater.

360:10-3-20. 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.

(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.

(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.~~and orthodontia limitations, provided group coverage was in effect and there is no break in coverage.

(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 who 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 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.~~coverage except 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. The spouse may elect not to be covered provided a statement signed by the employee and the spouse is submitted to the Insurance Coordinator. Dependent's benefits shall only be covered under one primary insured 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. If there is a break in coverage then pre-existing and orthodontia limitations may apply.

360:10-3-26. Withdrawal from plan; termination or loss of coverage

(a) **Withdrawal from plan.** Those eligible entities participating on a voluntary basis that

elect to withdraw cannot re-enter the Program for one [1] year following the date of withdrawal except for extraordinary circumstances. Notice of the election to withdraw must be provided to the Board thirty [30] days prior to the actual withdrawal date.

(b) **Termination of coverage due to insolvency of carrier.** Any eligible entities who have withdrawn and purchased other coverage, then have been notified by their other group health and/or dental insurance carrier that coverage is being terminated due to insolvency of the carrier may re-enroll within thirty [30] days after the loss of coverage by submitting a completed application form which must be approved by the Board prior to enrollment.

(c) **Individual member withdrawal and re-enrollment.** An individual employee who discontinues coverage on himself for any reason other than obtaining other group coverage cannot re-enroll in any coverage for himself or his dependents for a period of twelve [12] months. Subsequent to the end of this twelve [12] month period, he may reapply for coverage offered by the State and Education Employees Group Insurance Board provided that he is eligible through a participating entity.

(d) **Loss of other group health, dental or life insurance coverage.** The twelve [12] month requirement does not apply when the individual member has lost other group health, dental and/or life insurance coverage and is seeking reinstatement pursuant to Rule 360:10-3-26(c).

SUBCHAPTER 5. COVERAGE AND LIMITATIONS

PART 3. HEALTH BENEFIT PLANS

360:10-5-16. Plan limits

(a) **Deductible.** ~~Each member or dependent must meet a calendar year deductible.~~Covered members or dependents may be required to meet a calendar year deductible. Only covered charges will apply to the deductible.

(b) **Family deductible.** The family deductible is met when covered family medical expenses combined exceed the Plan's specified amount. No further deductible will be required from any covered participant for the remainder of the calendar year.

(c) **Out-of-pocket expenses.** Per person and family maximum calendar year out-of-pocket expenses are limited under HealthChoice to the percentage based coinsurance only. Copayments which have been established at specific dollar amounts will continue to apply after the out-of-pocket percentage based coinsurance maximum has been met.

(d) **Network out-of-pocket maximum.** The plan will pay 100% of eligible charges provided by a network provider, once the member or dependent exceeds the specified out-of-pocket calendar year maximum. The 100% payment of eligible charges will be made by the plan for the remainder of the calendar year. Network out-of-pocket maximum accumulations also apply to the non-network out-of-pocket maximum.

(e) **Non-network out-of-pocket maximum.** The plan will pay 100% of eligible charges provided by a non-network provider, once the member or dependent exceeds the specified out-of-pocket calendar year maximum. The 100% payment of eligible charges will be made by the plan for the remainder of the calendar year. Non-network out-of-pocket accumulations also apply to the network out-of-pocket maximum.

(f) **Lifetime maximum benefit.** There is a lifetime maximum benefit that will be paid by the plan for a member or ~~dependent.~~dependent, with regard to pharmacy benefits. ~~This maximum includes any health and pharmacy payments by the Plan.~~

(g) **Treatment by non-network providers.** Any treatment at a non-network provider will remain subject to the fee schedule or any other form of maximum claim payment limitation. Claims paid pursuant to the benefit administration procedures or guidelines as adopted by the Plan at any non-network hospital or provider are subject to the limited maximum allowable in every case, regardless of the reason why the member sought and received treatment at the non-network provider, and will usually result in substantial out-of-pocket expenses to the insured. Exceptions allowed by Statute at 74 O.S. §1304(12) and (13) may be made, when appropriate.

PART 5. LIFE BENEFITS

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~~ 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] 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

360:10-5-55. Scope of coverage; four classes of coverage

The dental expense benefit applies to eligible covered employees ~~automatically and to covered~~ and dependents. This benefit provides payment for dental expenses incurred in excess of any applicable deductible. It is not necessary for dependents to be covered by medical benefits to receive the benefits of this Plan. Coverage under this Plan is divided into four classes which are: Class A, Class B, Class C, and Class D.

360:10-5-56. Plan limits

(a) **Deductible.** The Deductible Amounts are the out-of-pocket expenses for a class of benefits incurred by the employee for himself or on behalf of a covered dependent during each calendar year.

(b) **Family deductible.** During any benefit period, the Plan will pay a percentage of the Covered Charges incurred which exceed the family Deductible Amount, if applicable.

(c) **Maximum benefits.** The dental plan has a maximum benefit on a calendar year basis as established by the Board. The Maximum Benefit During Lifetime Orthodontia is the maximum amount that may be paid for covered expenses incurred by the member or dependent during his or her lifetime.

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~~ items 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.~~

(3~~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.

(4~~5~~) Dental care or supplies to the extent that they are payable under other provisions of the policy.

(5~~6~~) Charges for any dental services and supplies which are in excess of the fee ~~schedule~~ schedule and deductible for such services and supplies.~~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.~~

(6~~7~~) Adult orthodontics without a diagnosis of temporomandibular joint dysfunction.

(7~~8~~) Cosmetic procedures.

(8~~9~~) Medical expenses for the treatment of temporomandibular joint dysfunction.

(9~~10~~) Medical services treating an oral condition.

(10~~11~~) Dental care or supplies resulting from taking part in committing or attempting to commit an assault or felony.

(11~~12~~) Dental care or supplies due to sickness or injury covered by Workers' Compensation, occupational disease law or similar laws.

(12~~13~~) Dental care or supplies as a result of Act of War declared or undeclared, Insurrection, or release of nuclear energy.

(13~~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.

(14~~15~~) Charges for treatment of accidental injury to natural teeth or gums.

(15~~16~~) All other conditions, services, procedures, treatments, expenses, items, and supplies excluded by the Board's Benefit Guidelines.

(16) Late enrollees in the dental plan have a one (1) year waiting period before being eligible for orthodontic benefits.

SUBCHAPTER 7. TERMINATION OF BENEFITS

360:10-7-1. Termination of benefits

(a) **Termination of coverage.** The coverage under this Plan will terminate at the earliest time stated below:

(1) On the last day of the calendar month in which employment terminates.

(2) When the Plan is discontinued.

(3) When any required premiums cease to be paid.

(4) The individual does not continue coverage upon changing to inactive status.

(5) For a dependent when said dependent becomes ineligible for coverage.

(6) A participating entity ceases to participate in this plan.

(b) **Submission of inaccurate or erroneous information.** If inaccurate or erroneous information is submitted by or on behalf of a member on any form or application for insurance coverage, coverage obtained pursuant to information provided on that form will be rescinded retroactive to the effective date.

(c) **Dependent termination of coverage.** In addition to (a) and (b) of this section, the coverage terminates with respect to an individual dependent:

(1) On the last day of the calendar month in which such person became covered as an employee.

(2) On the last day of the calendar month in which such person ceases to be an eligible dependent, except that the coverage of a dependent child shall not cease because the child is incapable of self-support and meets the eligibility requirements of the Board. The child must have become so incapable prior to attainment of age nineteen [19] and the child must be chiefly dependent upon the employee for support and maintenance. The coverage as to such child will be continued while such incapacity continues and while coverage with respect to dependents remains in force, provided such child meets all the requirements of the definition of "Dependent" except age. The Board shall have the right to require proof of the continuance of such incapacity of such child from time to time while the Plan remains in force.

[OAR Docket #04-789; filed 4-30-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-862]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
365:1-1-2. Office of the Insurance Commissioner [AMENDED]
Subchapter 9. Description of Forms and Instructions [NEW]
365:1-9-1. Company licensure forms [AMENDED]
365:1-9-15.1. License renewals and reinstatements [AMENDED]
365:1-9-19. Request for Assistance and Prompt Pay ~~form~~Forms [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1.
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Public hearing:
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April 26, 2004
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Failure of the Legislature to disapprove the rules resulted in approval on May 5, 2004
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May 5, 2004
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATION BY REFERENCE:
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ANALYSIS:
The proposed amendments to Rule 365:1-1-2 change the names of two divisions of the Insurance Department and adds the words "other person/entities" to clarify the fact that various persons and entities other that insurance companies are included in the responsibilities of the various divisions of the Department. The proposed amendments to Rule 365:1-9-1 deletes the certificate of similarity form requirement for alien and foreign insurers, because this form has been replaced by an Affidavit of Filing and Financial Statement Attestation pursuant to 36 O.S. § 311(A) (House Bill 1721). The proposed amendments to Rule 365:1-9-15.1 deletes subsections (e) and (f), because the Insurance Code addresses the matters involved in those subsections relating to reactivation of agent and limited lines producer licenses that become inactive as a result of a lack of any company appointments. The proposed amendments to Rule 365:1-9-19 add the Prompt Pay Form to the rule pursuant to 36 O.S. § 1219(H) (Senate Bill 635).
CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

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 14, 2004.

SUBCHAPTER 1. GENERAL PROVISIONS

365:1-1-2. Office of the Insurance Commissioner

The office of the Insurance Commissioner is composed of the Insurance Commissioner and such employees as are required and provided for by law. The Insurance Commissioner exercises executive and administrative supervision over the Office of the Insurance Commissioner.

(1) **General description of organization.** The office of the Insurance Commissioner is divided into the following principal operating units:

(A) Agents Licensing Division
(B) Bail Bond Division
(C) Consumer Assistance and Claims Division
(D) Comptroller Division
(E) ~~Data Processing~~ Information Technology Division
(F) Executive Division
(G) Financial and Examination Division
(H) Legal and Investigation Division
(I) Life, Accident and Health Division
(J) Property and Casualty Rates Division
(K) Real Estate Appraisers Division
(L) Utilization Review Division

(2) **Agents Licensing Division.** The Agents Licensing Division, headed by the Director of Agents Licensing, is responsible for determining whether applicants for

insurance agents, limited insurance representatives, insurance adjusters, third party administrators, life, accident and health insurance brokers and insurance consultants licenses meet the qualifications set forth in the statutes of the State of Oklahoma and is also responsible for administering the examinations given as required to applicants and for issuing renewal licenses. The Agents Licensing Division is also responsible for monitoring continuing education requirements for agents.

(3) **Bail Bond Division.** The Bail Bond Division is composed of the Director and necessary assistants and is responsible for determining whether applicants for bail bond licenses meet the qualifications set forth in the statutes of the State of Oklahoma, for administering the examinations given to all bail bondsmen, yearly renewal of license and surety/ professional appointments, processing of monthly reports for each type of license held by bondsman, collection of 2/10 of 1% reviewal fee of new liability written monthly, enforce statutory deposit requirements of professional bondsmen and initial investigation of complaints regarding possible violation of statutes.

(4) **Consumer Assistance and Claims Division.** The Consumer Assistance and Claims Division is composed of the ~~Assistant Commissioner~~ Director of ~~Claims~~ this division and necessary Policy Analysts, and is in charge of processing and investigating all complaints lodged against insurance companies and other persons/entities by the public. Further, this division answers all routine requests for information concerning insurance companies and insurance policies.

(5) **Comptroller Division.** The Comptroller Division is composed of the Comptroller and necessary assistants and is responsible for the internal fiscal affairs of the office, including preparation of payroll, purchase of equipment, approval of all travel claims made by staff and keeping of all fiscal records required by law.

(6) **~~Data Processing~~ Information Technology Division.** The ~~Data Processing~~ Information Technology Division is composed of the Director and necessary assistants and is responsible for providing all internal data processing services to the other divisions of the Insurance Department. Further, this division provides the public with both summaries and detailed information on many of the records maintained by the Insurance Department.

(7) **Executive Division.** The Executive Division, composed of the Insurance Commissioner and the Deputy Commissioner and necessary assistants, is charged with general supervision of all activities of the office including personnel and internal organization.

(8) **Financial and Examination Division.** The Financial and Examination Division is composed of the Deputy Chief Examiner, the Senior Financial Analyst and necessary Financial Analysts, and is responsible for determining whether insurance companies and other persons/entities applying for admission to do business in the State of Oklahoma meet the qualifications for admittance as set forth in the statutes of the State of Oklahoma. This division, through outside examiners, is responsible for conducting the statutory examination of all domestic and foreign insurance companies and other persons/entities and collects all premium taxes and statutory fees due the State.

(9) **Legal and Investigation Division.**

(A) The Legal Division is composed of the General Counsel and Assistant General Counsels, who are the chief law officers and consultants to the Insurance Commissioner and the other divisions within the office on legal matters. The Legal Division defends or prosecutes all proceedings held before the Insurance Commissioner, including complaint hearings, as well as investigative hearings. The Legal Division is charged with the duty of representing the Insurance Commissioner in the courts in matters which are a part of his/her official duties.

(B) The Investigation Division is composed of the Chief Investigator and assistants and is responsible for investigating complaints against licensed insurance entities and forwarding its findings to the Legal Division, if evidence is found of wrongdoing or non-compliance with the insurance laws of the State of Oklahoma.

(10) **Life, Accident and Health Division.** The Life, Accident and Health Division is composed of the Director and the Policy Analysts. This division is responsible for the receipt of all life, annuity and accident and health policy forms and determines whether such forms conform to the statutes of the State of Oklahoma. This division has the duty of approving or disapproving all forms submitted to it.

(11) **Property and Casualty Rates Division.** The Property and Casualty Rates Division is composed of the Director and necessary Analysts and is responsible for providing administrative and logistical support to the State Board for Property and Casualty Rates. The five member Board is the entity which establishes rates for all property and casualty insurers doing business in the State of Oklahoma.

(12) **Real Estate Appraisers Division.** The Director of the Real Estate Appraisers Division is responsible for determining whether applicants for real estate appraiser licensure/certification meet the qualifications set forth in the statutes of the State of Oklahoma and for administering the examinations given to all real estate appraisers.

(13) **Utilization Review Division.** The Director of the Utilization Review Division is responsible for determining whether applicants for Utilization Review Certificates of Registration meet the qualifications set forth in the statutes of the State of Oklahoma.

SUBCHAPTER 9. DESCRIPTION OF FORMS AND INSTRUCTIONS

365:1-9-1. Company licensure forms

(a) **License of authority form.** The license of authority form, executed under the hand and seal of the Insurance Commissioner and delivered, is evidence of an insurance company's authority to transact business within Oklahoma.

(b) **Annual statement form.** Annual statement forms must be filed by all admitted companies and postmarked on or before the first day of March of each year, reporting their business and financial condition as of December 31st of the preceding year. The completed forms must be subscribed and sworn to by the President, Secretary and other proper officers of the company. The Annual Statement is referred to as the "Convention Blank" and is in the general form and content approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported.

(c) **Quarterly statement form.** Quarterly statement forms must be filed by all domestic insurers and postmarked on or before May 15th, August 14th and November 14th of each year, reporting their business and financial condition as of March 31st, June 30th, and September 30th respectively. The completed forms must be subscribed and sworn to by the President, Secretary, and other proper officers of the company.

(d) **Appointment of Insurance Commissioner as attorney for services of process form.** The appointment of Insurance Commissioner as attorney for service of process form for the State of Oklahoma must be filed by all licensed alien and foreign insurers, and shall continue in force so long as any liability remains outstanding in Oklahoma against the filing company, as required by 36 O.S. §621.

(e) **Agreement and application form.** The agreement and application form for Oklahoma License must be submitted by all companies desiring admission or renewal license within Oklahoma. A company agrees in its execution of such form to transact business, upon issuance of license, in accordance with the laws of Oklahoma, and to pay all fees and taxes as may at any time be imposed by law, as required by 36 O.S. § 311 and § 615 and Section 1, Article 19, Okl. Const.

(f) **Designation of agent form.** The designation of agent form, which lists the person to whom service of process is to be forwarded, must be filed by all companies. This designation is required by 36 O.S. §621.

(g) ~~**Certificate of similarity form.** The certificate of similarity form must be executed by all alien and foreign insurers and such form must be attached to the Annual Statement filed with the Insurance Commissioner. This form certifies that the Annual Statement filed with Oklahoma is an exact copy of the annual statement filed with the domiciliary insurance department.~~

~~(h)~~ **Certificate of deposit form.** The certificate of deposit form, when executed by the Insurance Commissioner, certifies to the securities on deposit with the State of Oklahoma. All alien and foreign insurers must file a substantially similar form, executed by their domiciliary insurance department, upon making application for license in Oklahoma.

(~~i~~h) **Certificate of compliance form.** The certificate of compliance form, when executed by the Insurance Commissioner, certifies that the company named therein has complied with all the requirements of the Oklahoma law and is authorized to transact business within Oklahoma. All alien and foreign insurers must file a substantially similar form, executed by their domiciliary insurance department, upon making application for license in Oklahoma.

(~~j~~i) **Annual Oklahoma premium tax report.** The Oklahoma annual premium tax report, submitted with the Annual Statement filed with the Insurance Commissioner, reports Oklahoma tax on premium income of the filing insurer, and includes retaliatory tax and fire marshall tax calculations if applicable as well as a precalculated credit for Guaranty Association assessment.

(~~k~~j) **Appointment of examiner form.** The appointment of examiner form is used by the Insurance Commissioner to appoint examiners to represent Oklahoma and/or Zone 3 of the National Association of Insurance Commissioners in the examination of an insurance company, which empowers the person so appointed to enter into the examination of the insurance company named therein.

(~~l~~k) **Publication synopsis of the annual statement form.** Certain alien and foreign companies doing business in Oklahoma are required to publish a synopsis of their annual statement due to the retaliatory provisions of the Oklahoma law. When such publication is required, the publication synopsis of the annual statement form must be completed and returned to the Insurance Commissioner.

365:1-9-15.1. License renewals and reinstatements

(a) **Proof of courses.** As a prerequisite for submission of a renewal or reinstatement application, each licensee must submit Certificate(s) of Course Completion with said application to equal the total number of hours required.

(b) **Renewal period and required submissions.** Renewals will be accepted up to ninety days after the expiration date with a properly completed renewal form, proof of course completion and double the license fee.

(c) **Required submissions after ninety days.** After the ninety-day period and before two years after the license expiration date, a licensee shall be eligible for reinstatement by submitting a new application, photo, company appointment(s), and applicable fees. A licensee shall not be eligible for reinstatement if previously the license was revoked, suspended or continuance was denied.

(d) **Insurance adjusters.** This section shall also apply to insurance adjusters as defined by the Insurance Code.

~~(e) **Reactivating of License.** Upon termination per 36 O.S. § 1435.34(A), the license and/or coverage may be reactivated within ninety days with the submission of a duplicate licensee fee and company appointment. After ninety days, refer to subsection (c) of this section.~~

~~(f) **Reactivating of limited insurance representative license.** Upon termination pursuant to 36 O.S. § 1435.34(C), the license and/or coverage may be reactivated within ninety days with the submission of a duplicate licensee fee and company appointment. After ninety days, refer to subsection (c) of this section.~~

365:1-9-19. Request for Assistance and Prompt Pay ~~form~~Forms

The Request for Assistance ~~f~~Form and Prompt Pay Form are ~~is~~ used by the Consumer Assistance and Claims Division to gather information regarding complaints and/or inquiries. This information is used to contact insurance companies and other persons and/or entities to seek resolutions to complaints and answers to inquiries. The Consumer Assistance and Claims Division will also accept letters requesting assistance in lieu of ~~this~~ the Request for Assistance form.

[OAR Docket #04-862; filed 5-7-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 10. LIFE, ACCIDENT AND HEALTH

[OAR Docket #04-863]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 21. Recognition Of The 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits Regulation
365:10-21-4. 2001 CSO Mortality Table [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 1510 and 4029.
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Rule 365:10-21-4 change the date that the 2001 CSO Mortality Table may be used by insurance companies to July 14, 2003 from January 1, 2004.
CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

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 14, 2004.

SUBCHAPTER 21. RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS REGULATION

365:10-21-4. 2001 CSO Mortality Table

(a) At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this regulation, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after ~~January 1~~ July 14, 200~~4~~3 and before the date specified in Subsection (b) to which 36 O.S. § 1510(A)(4)(iii) and 36 O.S. § 4029(H)(4)(h)(vi) of the Oklahoma Insurance Laws and O.A.C. 365:10-17-4(a) and (b) of the Oklahoma Insurance Department Regulations are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in this regulation, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which 36 O.S. § 1510(A)(4)(iii) and 36 O.S. § 4029(H)(4)(h)(vi) of the Oklahoma Insurance Laws and O.A.C. 365:10-17-4(a) and (b) of the Oklahoma Insurance Department Regulations are applicable.

[OAR Docket #04-863; filed 5-7-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #04-864]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
365:15-1-3. Property and casualty form filings [AMENDED]
365:15-1-15. Standard policy provision - defense expenses within the limit of liability [AMENDED]
Subchapter 7. Commercial Property and Casualty Competitive Loss Cost Rating Regulation
365:15-7-3. Property and casualty rate, loss cost and manual rate filings [AMENDED]
365:15-7-12. Resubmittal of ~~disapproved~~ filings. [AMENDED]
365:15-7-25. Multi tiering. [NEW]
Appendix B. Oklahoma Workers' Compensation Small Deductible Acceptance/Rejection Form [REVOKED]
Appendix B. Oklahoma Workers' Compensation Small Deductible Acceptance/Rejection Form [NEW]
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Insurance Commissioner, 36 O.S. § 307.1.
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INCORPORATION BY REFERENCE:
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ANALYSIS:
The proposed amendments to Rule 365:15-1-3 provide for form filings by line of business for ease and timeliness of the review of filings; removes "filing memorandum," because filing memorandum are now part of the NAIC Uniform Transmittal document, thus making a separate document unnecessary; provides that companies filing as a group may submit only the transmittal forms to reduce the cost of copying and storage for the insurance industry and the Insurance Department; provide for a side by side comparison of changes made by a filing and the inclusion of the Insurance Department's assigned filing number with a filing; and clarify filing resubmission procedures. The proposed amendments to Rule 365:15-1-15 change the reference "initial page" to the words "Declaration page" for clarification. The proposed amendments to Rule 365:15-7-3 add the words "by line of business" for ease and timeliness of the review of filings; The words "Rule of application" is removed to be consistent with changes made to 36 O.S. § 348.1(A)(3); the words "filing memorandum" is removed because it is now part of the NAIC Uniform Transmittal Document and is, therefore, no longer needed; the words "of the completed transmittal forms only" is added to include all paper documentation for each member of an insurance company group included in the filing thereby reducing storage needs and various other costs to the industry; Paragraph (9) is added to set out the procedure of pending filings in the same manner as the procedure currently in effect at Rule 365:15-1-3(b)(9)(H), which is applicable to all property and casualty form filings; Paragraph 10 is added to clarify the documentation that should be submitted with a filing for commercial loss costs, manual rules and rates similar to Rule 365:15-1-(b)(9) which outlines the requirements for a filing for policy forms. The proposed amendments to Rule 365:15-7-12 are needed to clarify that the resubmittal procedures also apply to rejected filings. New Rule 365:15-7-25 is needed for clarification relating to multiple rate levels for the same product. The proposed amendments to 365:15-Appendix B are due to changes to 85 O.S. § 64.
CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

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 14, 2004.

SUBCHAPTER 1. GENERAL PROVISIONS

365:15-1-3. Property and casualty form filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting form filings to the Insurance Commissioner as required by Article 36 of the Insurance Code.

(b) **Procedures.** Policy forms, endorsements and revisions thereto, by insurance companies and rating organizations licensed in Oklahoma, shall be submitted in compliance with this section, or shall be rejected for filing, and the entity which made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, Article 36, requires that each insurer shall make its form filings by line of business directly with the Insurance Commissioner. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed rating organization which makes such filings.

(2) **Filing fees.**

(A) Form filings shall be accompanied by the proper fees as specified in the Insurance Code.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction, regardless of the number of members or subscribers.

(C) Filings by rating organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(D) Filing fees are not required for transactions that involve only the following:

(i) Error corrections.

(ii) Informational filings (not required to be filed).

(iii) Change in effective date for approved filing.

(iv) Final printing of approved forms.

(v) Additional information or amendments to pending filings.

(vi) Withdrawal of obsolete forms having no impact on Oklahoma policyholders.

(vii) Change in officer or signature for approved filing.

(viii) Change in company logo for approved filing.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, P.O. Box 53408, Oklahoma City, OK 73152-3408.

(4) **Number of copies.** All filings including the cover letter, ~~filing memorandum,~~ all exhibits, forms and additional information submitted to the Insurance Commissioner shall be submitted with two (2) legible copies of all material. Such filings and exhibits shall be typewritten or printed. Companies that file as a group listing all companies on the transmittal letter may accomplish this requirement by submitting two copies plus one additional copy of the completed transmittal forms only for each additional insurer.

(5) **Effective date of filings.** The effective date of form filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken in writing, one (1) copy of which shall be attached to the official file copy and one (1) copy transmitted to the filing entity, or action may be indicated by stamp, with the individual stamping same, placing his initial or signature thereunder. Responses to questions shall be submitted in writing with ~~equal number of copies as required for any filing~~ two legible copies of all material. Nothing in

this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to Life, Accident and Health. Life, Accident and Health filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted which arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Filing form and content.** All filings shall ~~be accompanied by a filing memorandum attached to the front thereof,~~ contain~~ing~~ the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A "RE" or "caption" briefly describing the content and context of the filing.

(C) A list or index of the forms filed in the filing letter or attached thereto including the form numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including, reasoning therefor, illustrative examples, including "John Doe" specimen form, and a comparison of currently approved and proposed materials (side by side comparison).

(E) A concise statement to identify the form to be replaced by the filing including the approval date in this jurisdiction and the identifying filing number of the filing containing the form to be replaced as assigned by the Insurance Department.

(F) If a form is being withdrawn or amended due to court decisions in any jurisdiction, the filing entity shall furnish the legal citation, and if from another jurisdiction, a copy of such decision or opinion with its filing.

(G) If a form filing is due to a federal law or regulation of a federal agency, the filing entity shall furnish the legal citation and a copy of the pertinent provisions.

(H) ~~**Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof.~~ Completed transmittal forms and exhibits.

(10) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof.

(11) **Duration of filings.** All filings are in effect until withdrawn by the insurer or rating organization, with approval of the Insurance Commissioner or until abrogated by the Insurance Commissioner.

(~~11~~ 12) **Bureau deviations.** Every member of, or subscriber to, a licensed rating organization may adhere to any filings made on its behalf by its Rating Organization, except that any such member or subscriber may deviate from such filings as authorized by this section if it has filed with the Rating Organization and with the Insurance Commissioner, the deviation to be applied and information necessary to justify the deviation. If such deviation is approved, it shall remain in force until such approval is withdrawn by the insurer with approval of the Insurance Commissioner.

(~~12~~ 13) **Group filings.** Where filings are made on behalf of more than one insurer, a designation shall list the insurer or insurers by individual name and not by Company group.

(~~13~~ 14) **Members of or subscribers to a licensed rating organization.**

(A) **Filings.** A licensed rating organization may make filings on behalf of its members and subscribers except deviation filings.

(B) **Adherence to filings.** Every member of or subscriber to a licensed rating organization may adhere to any filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings upon compliance with this section and approval of the Insurance Commissioner

(C) **Individual company filings.** Members and subscribers shall not file individual forms that have been filed on their behalf by the appropriate rating organization. Declaration pages, policy "jackets" and other forms not normally filed by the rating organization should be filed by the insurer directly with the Insurance Commissioner.

(D) **Filing requirements; bureau form deviation.** If form deviations are proposed, file form including supporting data with the Insurance Commissioner and furnish copies to the appropriate rating organization.

(E) **Agency filings.** "Agency Filings" by a Rating Organization on behalf of its members or subscribers shall be accepted by the Insurance Commissioner in instances where the rating organization does not have a filing in effect for the coverage involved.

(~~14~~ 15) **Independent filings.** If the insurer is not a member or subscriber of a bureau for the kind and line of insurance involved, filing shall comply with the following:

(A) File Policy Forms, Endorsements, and other materials, with the Insurance Commissioner and designate them as "Independent Filings".

(B) File support of each filing in accordance with this section.

(C) For revisions, file form with the Insurance Commissioner.

(~~15~~ 16) **Reference filings; rating organization filings.**

(A) **Filings permitted without reference filing agreement.** Rating Organization forms used in whole or in part may be adopted by "Reference Filings" subject to the approval of the Insurance Commissioner. When making such type filing submit a filing memorandum identifying the forms used. Departures and

exceptions, if any, shall be accompanied by the necessary supporting data. Such adoption shall apply only to current filings and shall have no automatic effect as to future filings. Each rating organization filing shall be separately and specifically adopted.

(B) **Filings permitted with reference filing agreement.** Approved Rating Organization material may be adopted by filing a REFERENCE FILING AGREEMENT with the Insurance Commissioner identifying the forms and material to be used. Such adoption shall apply from the date it is approved by the Insurance Commissioner to filings in effect on that date and to all applicable future filings. It shall remain in effect until such time as the agreement is withdrawn with the approval of the Commissioner.

(C) **Reference filing.** If filing by "Reference Filing" DO NOT file forms.

(~~16~~ 17) **Resubmittal of ~~disapproved~~ filings.** All ~~resubmitted~~ resubmissions of disapproved or rejected filings shall be presented to the Insurance Commissioner in the same manner as required by this section for an original filing. In addition the cover letter or ~~filing memorandum~~ completed transmittal forms addressed to the Insurance Commissioner shall state the full and complete history of the filing, the reason for disapproval or rejection, and the factors which distinguish the resubmittal so it warrants reconsideration.

(~~17~~ 18) **Retroactive filings.** The Insurance Commissioner has no authority to and shall not approve filings proposing a retroactive effective date except in cases of a filing correcting an error in a previously approved filing and in cases where required or necessitated by Statute.

(~~18~~ 19) **Delivery of policy to insured.** In any instance whereby a policy of insurance is effected the insurance shall be furnished with either:

(A) The original policy;

(B) A copy of the original policy or a duplicate policy printed with ten point or larger type; or

(C) A certificate including provisions and conditions of the original policy printed with ten point or larger type.

(~~19~~ 20) **Coverage elimination after policy issuance.** Any endorsement which eliminates or restricts coverage and which is issued during the policy term shall be identified as accepted by the insured, by the signature of the insured thereon, and a signed copy (original, computer generated or microfilm) of such endorsement shall be retained in the files of the insurer for one year after the expiration of the policy.

(~~20~~ 21) **Uniform standard mortgage clause.** The mortgage clause to be used by Insurance Companies in Oklahoma shall be uniform Standard Form Number 127B September 1934 Edition or subsequent editions, except upon written application by an insurer or rating organization, a cause providing broader coverage may be approved by the Insurance Commissioner.

(~~21~~ 22) **Claims-made policies.**

(A) The policy application and the Declarations page of each claims-made policy shall include a conspicuous notice indicating that the contract is a claims-made policy and advising the policyholder to read its provisions.

(B) The policy shall provide for extended reporting period options based on rules, rates or rating plans approved by the State Board for Property and Casualty Rates or the Insurance Commissioner.

(~~22~~ 23) **New forms, reductions in coverage.**

(A) Form filings that may result in the elimination of claims (losses) shall be considered as a relevant factor to be given due consideration by the State Board for Property and Casualty Rates or the Insurance Commissioner as respects rates in effect or proposed for the coverage involved.

(B) The filer shall fully disclose the rate consideration so that the Board or Commissioner can be notified of the form filing. The form filing may be disapproved if the rate effect has not been considered in rules, rates or rating plans approved by the Board.

365:15-1-15. Standard policy provision-defense expenses within the limit of liability

No insurance policy or contract shall be made, issued or delivered by any insurer or by any agent or representative thereof, that includes defense expenses within the limit of liability. The Insurance Commissioner may waive this requirement based upon factors such as noncompetitive market or type of insurance coverage. If the Insurance Commissioner waives this requirement, the ~~initial~~ Declarations page of the policy shall include a conspicuous notice indicating that the contract contains defense expenses within the limit of liability and advising the policyholder to read its provisions.

SUBCHAPTER 7. COMMERCIAL PROPERTY AND CASUALTY COMPETITIVE LOSS COST RATING REGULATION

365:15-7-3. Property and casualty rate, loss cost and manual rule filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting rate, loss cost and manual rule filings to the Insurance Commissioner as required by 36 O.S. § 981 et seq.

(b) **Procedures.** Rate, loss cost and manual rules and revisions thereto by insurance companies and advisory organizations licensed in Oklahoma shall be submitted in compliance with this section, or shall be rejected for filing, and the entity that made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, 36 O.S. § 981 et seq., requires that each insurer shall make its rate, loss cost and manual rule filings by line of business directly with the Insurance Commissioner. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to

an Oklahoma licensed advisory organization which makes such filings.

(2) **Filing fees.**

(A) Rate, loss cost and manual rule filings shall be accompanied by the proper fees as specified in the Insurance Code.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(C) Filings by rating organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(D) Filing fees are not required for transactions that involve only the following:

(i) Excess consent rate filings;

(ii) Individual risk submissions;

(iii) Individual risk filings for excess workers' compensation;

(iv) Changing the effective date for advisory organization filings by members or subscribers;

(v) Additional information or amendments to pending filings;

(vi) Advising effective date for approved filing and/or submitting final printed materials;

(vii) Dividend plans;

(viii) ~~Rules of application;~~

~~(ix)~~ Informational filings (not required to be filed);

(~~x~~ix) Withdrawal of obsolete filings having no impact on Oklahoma policyholders; and/or

(~~xi~~ix) Nonadoption of advisory organization filings that would be a duplication of a filing in effect for the filer.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, P.O. Box 53408, Oklahoma City, OK 73152-3408.

(4) **Number of copies.** All filings including the cover letter, ~~filing memorandum,~~ all exhibits, rate sheets and additional information submitted to the Insurance Commissioner shall be submitted with two (2) legible copies of all material. Such filings and exhibits shall be typewritten or printed. Companies that file as a group listing all companies on the transmittal letter may accomplish this requirement by submitting two copies plus one additional copy of the completed transmittal forms only for each additional insurer.

(5) **Effective date of filings.** The effective date of rate, loss cost and manual rule filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken in writing, one (1) copy of which shall be attached to the official file copy and one (1) copy transmitted to the filing entity, or action may be indicated by stamp, with the individual stamping same, placing their initial or signature thereunder. Responses to questions shall be submitted in writing ~~with equal number of copies as required for any filing~~ two legible copies of all material. Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to life, accident and health insurance. Life, accident and health insurance filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted that arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof.

(10) **Filing form and content.** All filings shall include the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A "RE" or "caption" briefly describing the content and context of the filing.

(C) A list or index of the manual pages filed in the filing letter or attached thereto including the page numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including, reasoning therefor, illustrative examples, including "John Doe" specimen examples, and a comparison of currently approved and proposed materials (side by side comparison).

(E) A concise statement to identify the manual pages (rate and/or rule) to be replaced by the filing including the approval date in this jurisdiction and the identifying Oklahoma Insurance Department's assigned filing number of the filing containing the documents to be replaced .

(F) Completed transmittal forms and exhibits.

365:15-7-12. Resubmittal of disapproved or rejected filings.

All resubmitted filings shall be presented to the Insurance Commissioner in the same manner required by this subchapter for an original filing. In addition the cover letter or ~~filing memorandum~~completed transmittal forms addressed to the Insurance Commissioner shall state the full and complete history of the filing, the reason for disapproval, and the factors, that distinguish the resubmittal to warrant reconsideration.

365:15-7-25. Multi tiering

Eligibility requirements for each tier must be submitted. The tier eligibility requirements must be specific and mutually exclusive, so that no insured would be eligible for more than one tier. Justification must be provided for the rate differential for each tier.

APPENDIX B. OKLAHOMA WORKERS' COMPENSATION SMALL DEDUCTIBLE ACCEPTANCE/REJECTION FORM [REVOKED]

APPENDIX B. OKLAHOMA WORKERS' COMPENSATION SMALL DEDUCTIBLE ACCEPTANCE/REJECTION FORM [NEW]

Oklahoma law requires insurers to offer a medical claim deductible on all Oklahoma Workers' Compensation policies. Five medical deductible options are available. You are not required to select the medical deductible option, but if you choose to exercise this option, you may choose only one deductible amount. Please carefully review the requirements for the medical deductible option outlined below.

MEDICAL DEDUCTIBLE OPTIONS

The medical claims deductible options are Five Hundred Dollars, ($500), One Thousand Dollars ($1,000), One Thousand Five Hundred Dollars ($1,500), Two Thousand Dollars ($2,000), and Two Thousand Five Hundred Dollars ($2,500). If you choose one of these options, you will be liable for the amount of the deductible for the medical benefits paid on **every claim** for bodily injury by accident or disease filed by an injured employee. Claim amounts up to five hundred dollars ($500) annually which are paid under the deductible will be excluded from your experience modifier.

EMPLOYER OBLIGATIONS IF MEDICAL DEDUCTIBLE OPTION IS SELECTED

Oklahoma law prohibits you from directly or indirectly charging to or passing on the medical deductible amount to the injured worker or the insurer.

If you choose a medical deductible option, the insurer will pay the entire cost of medical bills directly to the provider of the services and then seek reimbursement from you for the deductible amount. The insurer will bill you for the deductible amount. ***WARNING:*** **You must reimburse the insurer within sixty (60) days of a written demand. If you fail to reimburse the insurer within sixty days, the insurer may seek to recover the *full amount* of such claim from you.**

ACCEPTANCE / REJECTION

[ ] Yes, I have read the medical deductible information outlined above and want the following medical deductible amount to apply to medical claims under Oklahoma Workers' Compensation Law. I understand that this medical deductible applies to **every claim** for bodily injury by accident or disease filed by an injured employee.

[ ] $ 500
[ ] $1,000
[ ] $1,500
[ ] $2,000
[ ] $2,500

[ ] No, I do not want the medical deductible described in this notice.

NAMED INSURED: _____

ADDRESS: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

THIS FORM IS NOT A PART OF YOUR POLICY AND DOES NOT PROVIDE COVERAGE.

[OAR Docket #04-864; filed 5-7-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #04-865]

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PERMANENT final adoption
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Subchapter 9. Medical Professional Liability Rate Setting [NEW]
365:15-9-1. Purpose [NEW]
365:15-9-2. Severability [NEW]
365:15-9-3. Notice to policyholders [NEW]
365:15-9-4. Stenographer for hearing [NEW]
365:15-9-5. Purchasing groups [NEW]
365:15-9-6. Rating organizations [NEW]
365:15-9-7. Right to appeal [NEW]
365:15-9-8. Miscellaneous
365:15-Appendix D. Notification of Policyholders of Application for Rate Change [NEW]
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ANALYSIS:
The proposed new rules implement Section 6821 of Title 36 relating to medical professional liability rate setting and approval by the Insurance Commissioner.
CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

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 14, 2004.

SUBCHAPTER 9. MEDICAL PROFESSIONAL LIABILITY RATE SETTING

365:15-9-1. Purpose

The purpose of this subchapter is to set forth rules to carry out the provisions of Section 6821 of Title 36 relating to medical professional liability rate setting.

365:15-9-2. Severability

If any section or portion of a section of this subchapter or its applicability to any person or circumstance is held invalid by a court, the remainder of this subchapter or the applicability of the provision to other persons or circumstances shall not be affected.

365:15-9-3. Notice to policyholders

(a) The Commissioner may direct in writing that the medical professional liability insurer filing a rate change application provide the notification to policyholders required pursuant to Section 6821(C) of Title 36. Upon notification to the policyholders as directed by the Commissioner, the Commissioner may direct that the medical professional liability insurer deliver to the Insurance Department an affidavit executed by an officer of the insurer attesting that said notification has been provided to its policyholders.

(b) Notification to policyholders required pursuant to Section 6821(C) of Title 36 shall be in the form as set out in Appendix D of this Chapter.

365:15-9-4. Certified shorthand reporter

(a) The medical professional liability insurer who files a rate change application shall have the responsibility of providing a certified shorthand reporter for a hearing on the rate change application.

(b) The medical professional liability insurer shall notify the Insurance Department of the contact information of the certified shorthand reporter at least seven days prior to the scheduled hearing. The medical professional liability insurer's choice of certified shorthand reporter must be acceptable to the Insurance Department. The medical professional liability insurer shall provide a written copy of the hearing transcript to the Insurance Department as soon as the transcript becomes available.

365:15-9-5. Purchasing Groups

Purchasing Groups as defined by Section 6453 of Title 36 shall be exempt from the provisions of Section 6821 of Title 36 and this subchapter.

365:15-9-6. Rating organizations

Rating and advisory organizations as defined by Section 982 and licensed pursuant to Section 991 of the Commercial Property and Casualty Competitive Loss Cost Rating Act, 36 O.S. §§ 981-998, shall be exempt from the provisions of Section 6821 of Title 36 and this subchapter. However, insurers who use information provided by a rating and advisory organization that has the result of increasing rates charged for medical professional liability insurance shall not be exempt from the provisions of Section 6821 of Title 36.

365:15-9-7. Right to appeal

Medical professional liability insurers shall have the right to appeal a final order of the Commissioner pursuant to the Oklahoma Administrative Procedures Act.

365:15-9-8. Miscellaneous

Supplementary rating information as defined by Section 982 and filed by insurers with the Property and Casualty Division shall remain under the authority of the Commercial Property and Casualty Competitive Loss Cost Rating Act, 36 O.S. §§ 981-998.

APPENDIX D. NOTIFICATION OF POLICYHOLDERS OF APPLICATION FOR RATE CHANGE [NEW]

NOTICE OF RATE CHANGE APPLICATION

TO ALL INSUREDS OF [medical professional liability insurer name]

On [rate change application filing date], [medical professional liability insurer name] filed a Rate Change Application with the Oklahoma Insurance Department, seeking approval of a [percentage] increase in its medical professional liability rates. The proposed effective date of this rate change will be [effective date]. Policyholders are entitled to notice of the Rate Change Application pursuant to Section 6821(C) of Title 36 of the Oklahoma Insurance Code

[Medical professional liability insurer name] has the burden of proving that the requested change is justified and meets the requirements of Section 6821. You or your representative may request a hearing by the Oklahoma Insurance Department on the Application. The hearing request must be in writing and must be received by the Insurance Department within forty-five (45) days of the date of this notice. The scope of the hearing will be limited to the items mentioned by Section 6821. Written requests for a hearing and written comments about the proposed change become public record and are subject to the Oklahoma Open Records Act.

No professional medical liability insurer shall cancel or refuse to renew coverage of a policyholder on the basis of a policyholder's exercise of any right pursuant to Section 6821.

Specific questions about the circumstances that produced the Rate Change Application should be directed to [medical professional liability insurer contact person, contact information]. Questions about the details of the Application should be directed to the Oklahoma Insurance Department's Property and Casualty Rates Division.

Sincerely,

[medical professional liability insurer contact information].

[OAR Docket #04-865; filed 5-7-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. LICENSURE OF AGENTS, ADJUSTERS, BAIL BONDSMEN, COMPANIES, PREPAID FUNERAL BENEFITS, AND VIATICAL AND LIFE SETTLEMENTS PROVIDERS AND BROKERS

[OAR Docket #04-866]

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Subchapter 3. Agents, Brokers, Adjusters and Limited Representatives
365:25-3-1. Insurance agents continuing education [AMENDED]
365:25-3-17. Agriculture Revenue Insurance License [NEW]
Subchapter 7. Companies
Part 5. Oklahoma Insurance Holding Company System Regulatory Act
365:25-7-31. Adequacy of surplus [AMENDED]
Part 7. Companies In Hazardous Financial Condition
365:25-7-44. Risk-based Capital Instructions [NEW]
Part 13. ~~Required Diskettes~~Electronic Filings
365:25-7-75. ~~Diskette~~Electronic filings of quarterly financial statements [AMENDED]
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Superseded rules:
Subchapter 3. Agents, Brokers, Adjusters and Limited Representatives
365:25-3-17. Agriculture Revenue License [NEW]
Gubernatorial approval:
August 4, 2003
Register Publication:
20 Ok Reg 2858
Docket Number:
03-3036
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Rule 365:25-3-1 clarify the beginning of the twenty-four month period within which insurance producer continuing education must be completed; add the requirement that continuing education course providers notify the Insurance Commissioner of repetition of a continuing education course; and provide that continuing education course approval will be valid for a period of five years and that material changes to a course shall be resubmitted for approval. The proposed new rule 365:25-3-17 sets out the requirements for licensing of producers to sell livestock risk insurance and livestock mortality insurance and is currently effective as an emergency rule with an effective date of August 4, 2003. The proposed amendments to Rule 365:25-7-31 correct a reference to a statutory provision. The proposed new Rule 365:25-7-44 adopts the the risk-based capital instructions of the National Association of Insurance Commissioners for use in preparing Risk-based Capital (RBC) Reports for submission to the Insurance Department. The proposed amendments to Rule 365:25-7-75 remove the references to the electronic filing of annual financial statements due to the fact that 36 O.S. § 311 (Senate Bill 1721) was amended effective November 1, 2003 to require electronic filing of annual statements with the NAIC.
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 14, 2004.

SUBCHAPTER 3. AGENTS, BROKERS, ADJUSTERS AND LIMITED REPRESENTATIVES

365:25-3-1. Insurance agents continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which an insurance agent must meet and to set forth the requirements for approval by the Insurance Commissioner of a proposed continuing education course.

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

(1) **"CEC"** means continuing education credit.

(2) **"Certificate of course completion"** means a document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.

(3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.

(4) **"Credit hour"** means at least a fifty (50) minute classroom instructional session unless a correspondence or self-study course.

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance agent.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance agents.

(9) **"Provider Continuing Education Reporting Form"** means a form acceptable to the Commissioner and

completed by the provider which documents completion of an approved course by an agent or agents.

(c) **Exceptions.** The requirements for continuing education in this section shall not apply to:

(1) limited insurance representatives.

(2) a non-resident agent who resides and is licensed in a state or district having continuing education requirements and the agent meets all the requirements of that state or district to practice therein. The non-resident agent shall be responsible for completing any reporting requirements necessary to verify completion.

(3) a non-resident agent of a state that does not require continuing education hours may fulfill the requirements of any other state's continuing education requirements and shall be deemed to have complied with this rule upon proof of completion of said hours

(d) **Continuing education requirements.**

(1) **CEC during twenty-four month period.** All licensees shall complete the required hours of continuing education as set forth in 36 O.S. § 1435.29 during each twenty-four month period. The twenty-four month period begins the first day of the month following the month in which the license is granted. The credit hours completed must be in those lines in which the agent is licensed.

(2) **Certificates of course completion required for license renewal.** Each agent shall submit upon each licensing renewal certificate(s) of course completion as approved by the Insurance Department, which verify courses completed during the previous twenty-four month period.

(3) **Credits carried over.** Credit hours in excess of the minimum twenty-four month period requirement will not carry forward. However, excess hours may be applied to bring a lapsed license into compliance.

(4) **Ethics credits.** During each twenty-four (24) month period, the agent shall complete two (2) credit hours but no more than four (4) credit hours of instruction in ethics out of the total credit hours required. The remainder of the hours required must be in lines applicable to the license. Courses in excess of four (4) ethics credits shall not carry forward nor will they apply to the total hours required. However, excess ethic credits may be applied retroactively in order to bring a lapsed license into compliance. Ethics shall include, but not be limited to, the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, policy replacement consideration, and conflicts of interest.

(5) **Small employer group, high risk pool, and recent health care legislation.** At least one of the continuing education credit hours of instruction completed by licensees in Health Insurance during each twenty-four month period must address the Oklahoma Small Employer Health Insurance Reform Act, the Oklahoma Health Insurance High Risk Pool Act, and any recent state or federal health care legislation. At least one additional hour of said continuing education credit hours of instruction must address long-term care.

(6) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session.

(7) **Prerequisite for renewal or reinstatement.** Effective January 1, 1992 as a prerequisite for licensure renewal or upon reinstatement following a lapse of license, an agent must submit, on his or her renewal/reinstatement date, the appropriate forms as specified in this section which establish that the education requirements have been met for the previous year(s).

(e) **Approval of continuing education providers.**

(1) **Information required, fee.** Each provider shall apply for approval from the Commissioner. Each provider, with the exception of public funded educational institutions, shall submit after its approval a fee of Two Hundred Dollars ($200.00), and all providers, including public funded educational institutions shall provide:

(A) Name and address of the provider;

(B) Contact person and his or her address and telephone number;

(C) The location of the courses or programs, if known, unless it is an individual study or correspondence course;

(D) The number of CEC hours requested for each course;

(E) Topic outlines which list the summarized topics covered in each course and a copy of any course materials. If a prior approved course has substantially changed, a summarization of those changes;

(F) The names and qualification of instructors. An instructor shall have one of the following qualifications:

(i) Three (3) years of recent experience in the subject area being taught; or

(ii) A degree related to the subject area being taught; or

(iii) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(2) **Renewal fee.** An annual renewal fee of Two Hundred Dollars ($200.00) shall be payable on or before the approval anniversary date of each year by each provider to renew the approval of the provider.

(3) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(f) **Courses; approval; records.**

(1) **Apply for approval 30 days prior to course.** At least thirty (30) days prior to the use of any course and not less than ten (10) days prior to the Continuing Education Advisory Committee meeting immediately preceding the course date, the provider shall apply to the Commissioner for course approval. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information

regarding the course, if necessary. The Commissioner will assign the number of CEC hours awarded for an approved course and the line or lines of insurance for which the course qualifies.

(2) **Written approval required.** All courses shall require written approval.

(3) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course approval. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.

(4) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.

(5) **Continuing education course must be separate from meetings.** Courses conducted in conjunction with other meetings must have a separate continuing education course component.

(6) **Content of courses.** Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, and subjects not relating to the insurance license. However, agency management courses designed to assist agents in becoming more efficient, profitable, and assuring their perpetuation, will be deemed to be in the best interest of the insuring public and thereby subject to approval. Each such agency management course must include the description, the effects the course is designed to accomplish toward the purposes of efficiency, profitability, and/or perpetuation and each course will be reviewed for approval on its own merits.

(7) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance agent a "Certificate of Course Completion" Form.

(8) **List of agents completing course to Commissioner; Agent license numbers.** At the completion of each course, the provider shall provide the Commissioner a list of all insurance agents who completed the course on the Provider Continuing Education Reporting Form. The list shall contain the license numbers of all insurance agents listed.

(9) **Course records maintained four years.** Providers shall maintain course records for at least four (4) years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.

(10) Repeated approved course. At least fourteen (14) days prior to repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date and instructor's name.

(g) **Correspondence and video courses.**

(1) **Correspondence courses.** An insurance agent who satisfactorily completes an approved course by correspondence and provides proof of satisfactory completion as specified by the Commissioner will receive credit for the number of hours assigned by the Commissioner for completion of the course.

(2) **Video courses.** In order for an insurance agent to receive credit for viewing an approved course presented by video cassette, the insurance agent must view the video cassette under the supervision of an approved instructor and swear by affidavit that (s)he has viewed the video cassette in its entirety. The affidavit must be submitted to the provider.

(h) **Repeating courses.** An insurance agent may repeat a course within the twenty-four month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the agent may not during the twenty-four month period earn more than the maximum credits designated for the course. An agent may repeat a course after two years have elapsed and receive the maximum credits designated for the course. This section shall not apply to ethics courses.

(i) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twenty-four-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the twenty-four month period.

(j) **Continuing education advisory committee.**

(1) There shall hereby be established the Continuing Education Advisory Committee. This committee shall consist of one (1) representative of a licensed life insurance company, one (1) representative of a licensed property and casualty insurance company, one (1) representative of the Professional Independent Insurance Agents of Oklahoma, one (1) representative of the Life Underwriter Training Council, one (1) representative of the Health Underwriters, one (1) licensed non-affiliated life agent, one (1) licensed non-affiliated property and casualty agent and two (2) individuals designated by the Insurance Commissioner. These committee members shall be appointed by the Commissioner and the term of each member shall be three (3) years; except that of the members first appointed, three shall serve for one (1) year, three shall serve for two (2) years, and two shall serve for three (3) years. Any member may be reappointed for successive terms. The committee shall meet monthly. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.

(2) Prior to the Commissioner's approval or disapproval of a course in 365:25-3-1(f), the Continuing Education Advisory Committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted in 365:25-3-1(e) regarding the course or additional information regarding the course, if necessary, the number of CEC hours awarded for an approved course and the line or lines of insurance for which

the course qualifies. Each course approval shall be valid for a period of ~~twelve (12) months~~ five (5) years, unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course approval following the review of material changes shall reset the five year validity period. At the expiration of the five year period, providers shall submit the course for approval by the Board if the provider wants to continue to offer the course for continuing education credit. ~~Course materials may be requested for review at the time of expiration.~~ This subsection shall apply to all existing approved continuing education courses at the time this rule becomes effective, with previously approved courses having an expiration date of five years from the date of prior approval, unless the course has a material change, as previously detailed. ~~Such courses must be resubmitted for approval within twelve (12) months of the effective date of this rule.~~

(k) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

365: 25-3-17. Agriculture revenue insurance license

(a) **Purpose.** The purpose of this section is to set forth the requirements for licensing of producers to sell livestock risk insurance, livestock mortality insurance products, and other agricultural revenue insurance lines as determined by the Commissioner by rule.

(b) **Definitions.** As used in this section:

(1) **"Agriculture Revenue Insurance "** means crop hail insurance, multiperil crop hail insurance, livestock mortality insurance, livestock risk insurance and any additional lines of insurance as determined by the Commissioner by rule.

(2) **"Adjuster"** means any person licensed as an adjuster pursuant to 36 O.S. § 6201, et seq. of the Oklahoma Statutes.

(3) **"Commissioner"** means the Insurance Commissioner of the State of Oklahoma.

(4) **"Crop Hail Insurance" and "Multiperil Crop Hail Insurance (crop/hail)"** means insurance coverage against hail damage to crops provided by either a private insurer or the Federal Crop Insurance Corporation.

(5) **"Limited Lines Producer"** means a producer licensed pursuant to 36 O.S. § 1435.20 of the Act.

(6) **"Livestock Mortality Insurance"** means insurance coverage that protects agriculture livestock against injury or death or perils that result in livestock destruction. Livestock mortality insurance does not include coverage for animals used primarily for racing or show.

(7) **"Livestock Risk Insurance"** means livestock risk protection insurance that offers price protection for certain livestock producers and is reinsured by the Federal Crop Insurance Corporation pursuant to the authority of 7 U.S.C. § 1508(h) and 1523(b).

(8) **"The Act"** means the Oklahoma Producer Licensing Act, 36 O.S. § 1435.1, et seq.

(c) **Limited lines producer license - agriculture revenue insurance.** Any person licensed as a limited lines producer license that includes the lines of crop hail and multiperil crop hail insurance may obtain a limited lines license for the line of agriculture revenue insurance.

(d) **Claims adjusting.** Persons submitting a claim under a policy authorized by this section shall have their claims adjusted by an adjuster licensed by the Commissioner to adjust claims as a licensed crop/hail, property or casualty adjuster.

SUBCHAPTER 7. COMPANIES

PART 5. OKLAHOMA INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

365:25-7-31. Adequacy of surplus

The factors set forth in Section 1655~~(e)~~(d) of the Act are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Commissioner, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

PART 7. COMPANIES IN HAZARDOUS FINANCIAL CONDITION

365:25-7-44. Risk-based capital instructions

RBC Reports submitted to the Insurance Department pursuant to the Risk-based Capital for Insurers Act, 36 O.S. § 1521, et seq., shall be in a form and contain such information as is required by the risk-based capital instructions adopted by the National Association of Insurance Commissioners.

PART 13. ~~REQUIRED DISKETTES~~ELECTRONIC FILINGS

365:25-7-75. ~~Diskette~~ Electronic filings of quarterly financial statements

Each insurer authorized to do business under the provisions of the Oklahoma Insurance Code shall file ~~annual and~~ quarterly financial statements, along with any supplemental filings, electronically with the ~~Insurance Commissioner and the~~ National Association of Insurance Commissioners (NAIC) by electronic means and format as approved by ~~the Insurance~~

~~Commissioner and~~ the NAIC. Each insurer shall file electronically on or before the due dates specified in the Oklahoma Insurance Code and the NAIC Annual Statement Insurance Handbook.

[OAR Docket #04-866; filed 5-7-04]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 40. HEALTH MAINTENANCE ORGANIZATIONS (HMO)

[OAR Docket #04-867]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
365:40-1-1. Purpose [NEW]
365:40-1-2. Definitions [NEW]
365:40-1-3. Medicaid HMOs
365:40-1-4. Severability provision [NEW]
Subchapter 3. Financial [NEW]
Part 1. HMO Forms and instructions [NEW]
365:40-3-1. Licensure forms [NEW]
365:40-3-2. Deposit of securities forms [NEW]
Part 3. Holding Company System [NEW]
365:40-3-10. Definitions [NEW]
365:40-3-11. Compliance with Article 16A of Title 36 [NEW]
365:40-3-12. Annual Registration Statements [NEW]
365:40-3-13. Transactions with affiliates [NEW]
365:40-3-14. Prior approval pursuant to 36 O.S. § 6903(C) [NEW]
365:40-3-15. Notice of amendments or modifications pursuant to 36 O.S. § 6903(C) [NEW]
365:40-3-16. Redomestication [NEW]
365:40-3-17. Forms: general requirements [NEW]
365:40-3-18. Forms: incorporation by reference, summaries and omissions [NEW]
365:40-3-19. Acquisition of control; statement filing (HMO Form A) [NEW]
365:40-3-20. Pre-acquisition notification [NEW]
365:40-3-21. Annual registration of HMOs; statement filing (HMO Form B) [NEW]
365:40-3-22. Dividend to stockholders [NEW]
365:40-3-23. Extraordinary dividends and other distributions [NEW]
365:40-3-24. Adequacy of surplus [NEW]
365:40-3-25. Failure to file [NEW]
Part 5. Miscellaneous [NEW]
365:40-3-30. Liabilities [NEW]
365:40-3-31. Name of HMO [NEW]
365:40-3-32. Standards for determining hazardous financial condition [NEW]
365:40-3-33. Commissioner's authority [NEW]
Subchapter 5. Life, Accident & Health Division and Claims and Consumer Assistance Division Rules [NEW]
Part 1. General Provisions [NEW]
365:40-5-1. Definitions [NEW]
Part 3. Rating System [NEW]
365:40-5-10. Definitions [NEW]
365:40-5-11. Community rating [NEW]
365:40-5-12. Community rating by class [NEW]
365:40-5-13. Adjusted community rating [NEW]
365:40-5-14. Rates to reflect risk-sharing arrangements [NEW]
Part 5. Basic And Supplemental Health Care Services [NEW]
365:40-5-20. Basic health care services [NEW]
365:40-5-21. Supplemental health care services [NEW]
365:40-5-22. Benefit changes [NEW]
365:40-5-23. Identification cards [NEW]
Part 7. Point Of Service Option [NEW]
365:40-5-30. Definitions [NEW]
365:40-5-31. Purpose/scope [NEW]
365:40-5-32. Responsibilities of the HMO [NEW]
Part 9. HMO Requirements And Prohibitions [NEW]
365:40-5-40. Services to members [NEW]
365:40-5-41. Membership [NEW]
365:40-5-42. Individual conversion contracts [NEW]
365:40-5-43. Premiums/co-payments [NEW]
365:40-5-44. Internal grievance system [NEW]
365:40-5-45. Guaranteed renewal [NEW]
365:40-5-46. Small group offering [NEW]
365:40-5-47. Special enrollment periods [NEW]
Part 11. Coordination Of Benefits [NEW]
365:40-5-50. Purpose [NEW]
365:40-5-51. Definitions [NEW]
365:40-5-52. Effect on benefits [NEW]
365:40-5-53. Right to receive and release necessary information [NEW]
365:40-5-54. Benefit payments [NEW]
365:40-5-55. Subrogation [NEW]
365:40-5-56. Small claim waivers [NEW]
365:40-5-57. Public education [NEW]
365:40-5-58. Retroactivity [NEW]
365:40-5-59. Facility of payment [NEW]
365:40-5-60. Right of recovery [NEW]
Part 13. Termination Of Members, Providers and Continuation of Benefits [NEW]
365:40-5-70. Termination of group or individual contracts [NEW]
365:40-5-71. Termination of providers [NEW]
365:40-5-72. Continuation of benefits [NEW]
365:40-5-73. Disenrollment for cause [NEW]
365:40-5-74. Certification of creditable coverage [NEW]
Part 15. Discontinuation of HMO [NEW]
365:40-5-80. Notice [NEW]
365:40-5-81. Individual market [NEW]
365:40-5-82. Group market [NEW]
365:40-5-83. Market reentry [NEW]
Part 17. Confidentiality of Medical Information and Liability [NEW]
365:40-5-90. Responsibility of HMO [NEW]
Part 19. Request For Assistance and Prompt Pay Form [NEW]
365:40-5-100. Request for assistance [NEW]
365:40-5-101. Prompt Pay Form and Requirements [NEW]
Part 21. Geographic Service Area Variations [NEW]
365:40-5-110. Accessibility of providers [NEW]
365:40-5-111. Marketing and enrolling [NEW]
365:40-5-112. Geographic area filings [NEW]
Part 23. Reimbursement of Claims [NEW]
365:40-5-120. Purpose [NEW]
365:40-5-121. Requirement to reimburse claims for point of service [NEW]
365:40-5-122. Responsibilities [NEW]
365:40-5-123. Reimbursement criteria [NEW]
310:40-5-124. Claims payment report [NEW]
365:40-5-125. Elements of a clean claim [NEW]
365:40-5-126. Disclosure requirements [NEW]
365:40-5-127. Disclosure of processing procedures [NEW]
365:40-5-128. Failure to promptly pay [NEW]
365:40-5-129. Date of claim receipt [NEW]
365:40-5-130. Terms of contracts [NEW]
Appendix A. HMO Form A [NEW]
Appendix B. HMO Form B [NEW]
Appendix C. HMO Form C [NEW]
Appendix D. HMO Form D [NEW]
Appendix E. HMO Form E [NEW]
Appendix F. HMO Form R [NEW]
Appendix G. Prompt Pay Form [NEW]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1 and 6923
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Superseded rules:
Subchapter 1. General Provisions [NEW]
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365:40-5-126. Disclosure requirements [NEW]
365:40-5-127. Disclosure of processing procedures [NEW]
365:40-5-128. Failure to promptly pay [NEW]
365:40-5-129. Date of claim receipt [NEW]
365:40-5-130. Terms of contracts [NEW]
Appendix A. HMO Form A [NEW]
Appendix B. HMO Form B [NEW]
Appendix C. HMO Form C [NEW]
Appendix D. HMO Form D [NEW]
Appendix E. HMO Form E [NEW]
Appendix F. HMO Form R [NEW]
Appendix G. Prompt Pay Form [NEW]
Gubernatorial approval:
November 10, 2003
Register Publication:
21 Ok Reg 77
Docket Number:
03-3160
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed new rules set forth the requirements for licensing and regulation of Health Maintenance Organizations pursuant to Senate Bill 635 which is effective November 1, 2003 including the Health Maintenance Organization Act of 2003, 36 O.S. § 6901, et seq. These rules are currently effective as emergency rules with an effective date of November 1, 2003.
CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

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 14, 2004.

SUBCHAPTER 1. GENERAL PROVISIONS

365:40-1-1. Purpose

This regulation provides rules administering the Health Maintenance Organizations Act of 2003, 36 O.S. § 6901, et seq., and related provisions of the Oklahoma Insurance Code.

365:40-1-2. Definitions

As used in this Chapter, unless the context requires otherwise:

"Alien HMO" means an HMO formed under the laws of a country other than the United States, except that for purposes of the Holding Company Act, alien HMO shall have the same meaning as foreign HMO.

"Department" means the Oklahoma Insurance Department pursuant to Title 36 of the Oklahoma Statutes.

"Domestic HMO" means an HMO formed under the laws of Oklahoma.

"Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

"Foreign HMO" means an HMO formed under the laws of another state, commonwealth, territory, or district of the United States.

"HMO Act" means the Health Maintenance Organization Act of 2003 as amended, 36 O.S. § 6901, et seq.

"Health Maintenance Organization" (HMO) has the meaning as defined at 36 O.S. § 6902, and, for purposes of this regulation, any reference to the terms insurer, insurance company or company in this regulation, in statutes referenced by this regulation or in statutes referenced in the HMO Act also includes health maintenance organizations.

"Holding Company Act" means the Insurance Holding Company System Regulatory Act, 36 O.S. § 1651, et seq.

"NAIC" means the National Association of Insurance Commissioners.

"Ultimate controlling person" means that person which is not controlled by any other person.

365:40-1-3. Medicaid HMOs

Domestic health maintenance organizations that contract with the Oklahoma Health Care Authority to provide basic health care services to Medicaid recipients and do not provide basic health care services to any other group of persons shall be exempt from compliance with O.A.C. 365:40-3-2 and 365:40-5-44 of this Chapter.

365:40-1-4. Severability provision

If any provision of this regulation, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this regulation, which can be given effect without the invalid provision, or application, and to that end the provisions of this regulation are severable.

SUBCHAPTER 3. FINANCIAL

PART 1. HMO FORMS AND INSTRUCTIONS

365:40-3-1. Licensure forms

(a) **Certificate of authority form.** The certificate of authority form, executed under the hand and seal of the Insurance Commissioner and delivered, is evidence of an HMO's authority to transact business within Oklahoma.

(b) **Annual statement form.** Annual statement forms must be filed by all admitted companies and postmarked on or before the first day of March of each year, reporting their business and financial condition as of December 31st of the preceding year. The completed forms must be subscribed and sworn to by the President, Secretary and other proper officers of the company. The Annual Statement is referred to as the "Convention Blank" and is in the general form and content approved by the National Association of Insurance Commissioners. The statements shall be prepared in accordance with the NAIC annual statement instruction handbooks and follow the NAIC accounting practices and procedures manuals as supplemented by the Insurance Commissioner by rule.

(c) **Quarterly statement form.** Quarterly statement forms must be filed by all domestic HMOs and postmarked on or before the forty-fifth day after the end of the reporting period of each year, reporting their business and financial condition as of March 31st, June 30th, and September 30th respectively. The completed forms must be subscribed and sworn to by the President, Secretary, and other proper executive officers of the company.

(d) **Uniform Consent To Service of Process form.** All companies must file the Uniform Consent to Service of Process form of the NAIC listing the person to whom service of process is to be forwarded. The appointment of Insurance Commissioner as attorney for service of process form for the State of Oklahoma must be filed by all licensed alien and foreign HMOs using the Uniform Consent to Service of Process form of the NAIC and shall continue in force so long as any liability remains outstanding in Oklahoma against the filing company as required by 36 O.S. § 6903.

(e) **Uniform Certificate of Authority Application form (UCAA).** All companies desiring admission or renewal licensure within Oklahoma shall submit the Uniform Certificate of Authority Application form of the NAIC (UCAA). A company agrees by its execution of such form to transact business, upon issuance of license, in accordance with the laws of Oklahoma, and to pay all fees and taxes as may at any time be imposed by law.

(1) Applicants shall submit three (3) copies of the form and its exhibits and/or attachments as well as any accompanying forms.

(2) State specific information required by the UCAA form shall include applicable items listed in 36 O.S. § 6903(C) and documentation to demonstrate compliance with 36 O.S. § 6907.

(f) **Certificate of similarity form.** All alien and foreign HMOs must execute the certificate of similarity form and such form must be attached to the Annual Statement filed with the Insurance Commissioner. This form certifies that the Annual Statement filed with Oklahoma is an exact copy of the annual statement filed with the domiciliary regulatory agency.

(g) **Certificate of deposit form.** The certificate of deposit form, when executed by the Insurance Commissioner, certifies to the securities on deposit with the State of Oklahoma. Upon making application for license in Oklahoma, all alien and foreign HMOs must file a substantially similar form executed by their domiciliary regulatory agency.

(h) **Certificate of compliance form.** The certificate of compliance form, when executed by the Insurance Commissioner, certifies that the company named therein has complied with all the requirements of the Oklahoma law and is authorized to transact business within Oklahoma. Upon making application for license in Oklahoma, all alien and foreign HMOs must file a substantially similar form executed by their domiciliary regulatory agency.

(i) **Annual Oklahoma premium tax report.** The Oklahoma annual premium tax report, submitted with the Annual Statement filed with the Insurance Commissioner, reports Oklahoma tax on premium income of the filing HMO, and includes fire marshal tax calculations if applicable.

(j) **Appointment of examiner form.** The appointment of examiner form is used by the Insurance Commissioner to appoint examiners to represent Oklahoma and/or Zone 3 of the National Association of Insurance Commissioners in the examination of an HMO, which empowers the person so appointed to enter into the examination of the HMO named therein.

365:40-3-2. Deposit of securities forms

(a) **Deposit form.** The deposit form is used by all companies depositing securities with the Insurance Department to be held by the State Treasurer's Office. A description of the securities and value must be itemized on this form and said form must accompany securities being deposited when presented to the Insurance Commissioner for approval. After completion of transaction, a copy of this form is sent to said company for use to obtain release of deposited securities. Prior to the withdrawal of said securities, the deposit form must be executed by a company official authorized to make such withdrawals and presented to the Insurance Commissioner for approval.

(b) **Deposits in the name of Insurance Commissioner and HMO.** Deposits with the Insurance Commissioner made pursuant to 36 O.S. § 6913(B) shall be in the name of the Insurance Commissioner and the HMO making the deposit, and shall not be released by any company holding such security without the signatures of the Insurance Commissioner and the authorized personnel of the HMO. The deposit shall be held by the State Treasurer of Oklahoma unless the Insurance Commissioner approves, pursuant to 36 O.S. § 6913(B), the holding of said deposit by an organization or trustee acceptable to the Insurance Commissioner through which a custodial or controlled account is utilized.

(c) **Resolution form.** Each company having securities on deposit with the Insurance Department must adopt a resolution and file it with the Insurance Commissioner's Office authorizing and empowering certain persons designated by said company to deal with the securities on deposit. Requests for exchange or withdrawal of deposited securities will not be honored unless made by designated persons.

PART 3. HOLDING COMPANY SYSTEM

365:40-3-10. Definitions

Unless the context otherwise requires, terms found in this subsection shall have the same meaning as defined in Section 1651 of Title 36.

365:40-3-11. Compliance with Article 16A of Title 36

Definitions of terms found in Section 1651 of Title 36 shall apply when an HMO is seeking to comply with Article 16A of the Oklahoma Insurance Code pursuant to Section 6930 of Title 36. For purposes of this section, the definition of the term insurer as set out in Section 1651 of Title 36 shall include HMOs.

365:40-3-12. Annual registration statements

(a) **Registration.** Every HMO which is authorized to do business in this state and every individual who controls an HMO shall annually register with the Insurance Commissioner, except a foreign HMO subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any HMO, which is subject to registration under this section, shall register thirty (30) days after it becomes subject to registration, unless the Insurance Commissioner for good cause shown extends the time for registration, and then within such extended time.

(b) **Information and form required.** Every HMO subject to registration shall file a registration statement on a form prescribed by the National Association of Insurance Commissioners, which shall contain current information about:

(1) the capital structure, general financial condition, ownership and management of the HMO and any person controlling the HMO;

(2) the identity and relationship of every member of the insurance holding company system;

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the previous calendar year between such HMO and its affiliates:

(A) loans, other investments or purchases, sales or exchanges of securities of the affiliates by the HMO or of the HMO by its affiliates;

(B) purchases, sales or exchanges of assets;

(C) transactions not in the ordinary course of business;

(D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the HMO's assets to liability, other than contracts for health care services entered into in the ordinary course of the HMO's business;

(E) all management and service contracts and all cost-sharing arrangements;

(F) reinsurance agreements;

(G) dividends and other distributions to shareholders; and

(H) consolidated tax allocation agreements.

(4) other matters concerning transactions between registered HMOs and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner; and

(5) any pledge of the HMO's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(c) **Materiality.** No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purposes of this section. Unless the Commissioner by rule, regulation or order provides otherwise, sales purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent (1/2 of 1%) or less of an HMO's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(d) **Amendments to registration statements.** Each registered HMO shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the Commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition, provided, however, that subject to subsection (c) of Section 365:40-3-13 of this regulation, each registered HMO shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof.

(e) **Consolidated filing.** The Insurance Commissioner may require two or more affiliated HMOs or insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement, so long as such consolidated filings correctly reflect the condition of and transactions between such persons.

(f) **Alternative registration.** The Insurance Commissioner may allow an HMO which is authorized to do business in this state and which is a part of an insurance holding company system to register on behalf of any affiliated HMO which is required to register under subsection (a) and to file all information and material required to be filed pursuant to this Part.

(g) **Exemptions.** The provisions of this section shall not apply to any HMO, information or transaction if and to the extent that the Commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

(h) **Disclaimer.** Any person may file with the Commissioner a disclaimer of affiliation with any authorized HMO or such a disclaimer may be filed by such HMO or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such HMO as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the HMO shall be relieved of any duty to register or report under this section which may arise out of the HMO's relationship with such person unless and until the Commissioner disallows such a disclaimer. The Commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance. The filing of a disclaimer of affiliation shall not relieve a person from compliance with the requirements of 36 O.S. § 1653 or 6930.

(i) **Summary of registration statement.** All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(j) **Reporting dividends to shareholders.** Every domestic HMO that is a member of a holding company system shall report to the Insurance Department all dividends to shareholders within five (5) business days following declaration and at least ten (10) days, commencing from date of receipt by the Department, prior to payment thereof.

(k) **Information of HMOs.** Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an HMO where such information is reasonably necessary to enable the HMO to comply with the provisions of this article.

(l) **Violations.** The failure to file a registration statement, any summary of the registration statement thereto, or any additional information required by this section within the time specified for such filing shall be a violation of this section.

365:40-3-13. Transactions with affiliates

(a) **Material transactions.** The board of directors will be charged with exercising that degree of care that a prudent person would have exercised under similar circumstances. Material transactions shall be subject to the following standards:

(1) the terms shall be fair and reasonable;

(2) the books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transaction; and

(3) the HMO's capital and surplus following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the HMO's outstanding liabilities and adequate to its financial needs.

(b) **Insurance commissioner's approval required.**

(1) The prior written approval of the Insurance Commissioner shall be required for the following transactions

between a domestic HMO and its affiliates: sales, guarantees, purchases, exchanges, loans or extensions of credit or investments which, based upon an annual aggregate, involve more than five percent (5%) of the HMO's admitted assets or twenty-five percent (25%) of the HMO's capital and surplus, whichever is less, as of the latest statutory financial statement filed with the Insurance Commissioner; provided, however, that the Insurance Commissioner must either approve or disapprove within thirty (30) days after receiving written notification from the HMO of the proposed transaction and failure to disapprove the proposed transaction within thirty (30) days shall constitute approval of the transaction;

(2) The prior written approval of the Insurance Commissioner shall be required for any transactions between a domestic HMO and its affiliates where the HMO is found by the Insurance Commissioner to be in unsound condition or in such condition as to render its further transaction of business in Oklahoma hazardous to its enrollees, members, subscribers or to the people of Oklahoma; provided, however, that the Insurance Commissioner must either approve or disapprove within ninety (90) days after written notification by the HMO and failure to disapprove the proposed transaction within ninety (90) days shall constitute approval of the transaction;

(3) The following transactions involving a domestic HMO and any person in its holding company system may not be entered into unless the HMO has notified the Insurance Commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the Insurance Commissioner may permit, and the Insurance Commissioner has not disapproved it within such period.

(A) loans or extensions of credit to any person who is not an affiliate, where the HMO makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the HMO making such loans or extensions of credit provided such transactions are equal to or exceed the lesser of three percent (3%) of the HMO's admitted assets or twenty-five percent (25%) of capital and surplus;

(B) reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the HMO's liabilities equals or exceeds five percent (5%) of the HMO's capital and surplus as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an HMO to a nonaffiliate, if an agreement or understanding exists between the HMO and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the HMO;

(C) all management agreements, service contracts and all cost-sharing arrangements;

(c) **Approvals granted under other sections.** Nothing in this section shall supersede approvals granted under other sections of this title or transactions occurring prior to the effective date of this section.

(d) **Adequacy of surplus.** For purposes of Article 16A of the Oklahoma Insurance Code and this subsection, in determining whether an HMO's capital and surplus is reasonable in relation to the HMO's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) the size of the HMO as measured by its assets, capital and surplus, reserves, premium writing, insurance in force and other appropriate criteria;

(2) the extent to which the HMO's business is diversified among the several lines of insurance;

(3) the number and size of risks in each line of business;

(4) the extent of the geographical dispersion of the HMO's risks;

(5) the nature and extent of the HMO's reinsurance program;

(6) the quality, diversification, and liquidity of the HMO's investment portfolio;

(7) the recent past and projected future trend in the size of the HMO's investment portfolio;

(8) the capital and surplus maintained by other comparable HMOs;

(9) the adequacy of the HMO's reserves;

(10) the quality and liquidity of investments in subsidiaries. The Insurance Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of capital and surplus whenever in his judgment such investment so warrants; and

(11) the quality of the HMO's earnings and the extent to which the reported earnings include extraordinary items.

(e) **Dividends and other distributions.** No HMO shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or the Insurance Commissioner shall have approved such payment within such thirty-day period.

(1) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of

(A) ten percent (10%) of such HMO's capital and surplus as of the 31st day of December next preceding, or

(B) the net underwriting gain for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the HMO's own securities.

(2) Notwithstanding any other provision of law, an HMO may declare an extraordinary dividend or distribution which is conditional upon the Insurance Commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until

(A) the Insurance Commissioner has approved the payment of such dividend or distribution or

(B) the Insurance Commissioner has not disapproved such payment within the thirty-day period referred to above.

365:40-3-14. Prior approval pursuant to 36 O.S.§ 6903(C)

Pursuant to 36 O.S. § 6903(D), the prior written approval of the Insurance Commissioner shall be required for amendments or modifications to items required by 36 O.S. § 6903(C)(4), (5), (6), and (11). Requests for prior written approval shall be made on HMO Form D as set forth in Appendix D of this Chapter. Pursuant to O.A.C. 365:40-3-12, an Amended Registration Statement (HMO Form B) shall be filed for all items approved by the Insurance Commissioner.

365:40-3-15. Notice of amendments or modifications pursuant to 36 O.S.§ 6903(C)

Pursuant to 36 O.S. § 6903(D), amendments or modifications to the items required by 36 O.S. § 6903(C)(1), (2), (3), (7), (8), (9), (10), (12), (13) and (14) shall be included in the Amendments to Registration Statements and shall be made on HMO Form B as set forth in Appendix B of this Chapter.

365:40-3-16. Redomestication

(a) Any HMO which is organized under the laws of any other state and is admitted to do business in this state for the purpose of transacting business of a health maintenance organization may become a domestic HMO by complying with all of the requirements of law relative to the organization and licensing of a domestic HMO and by designating its principal place of business at a location in this state. Said domestic HMO will be entitled to like certificates and licenses to transact business in this state and shall be subject to the authority and jurisdiction of this state.

(1) The Insurance Commissioner shall approve an HMO's application to redomesticate unless he finds that:

(A) the HMO cannot comply with all the requirements of law relative to the organization and licensing of a domestic HMO,

(B) after redomestication, the HMO would not be able to satisfy the requirements for the issuance of a license to conduct business as an HMO in this State,

(C) the effect of the redomestication would be substantially to lessen competition in this state or tend to create a monopoly therein,

(D) the financial condition of the HMO is such as might jeopardize or prejudice the interest of its enrollees, members or subscribers or this state and is not in the public interest, or

(E) the competence, experience and integrity of those persons who control the operation of the HMO are such that it would not be in the interest of the enrollees, members, subscribers, the public or the state to permit the domestication.

(2) The HMO's application to redomesticate shall contain information acceptable to the Insurance Commissioner concerning its financial condition, its plan of operation for the succeeding three (3) years, and information concerning the competence, experience and integrity of those persons who control the operation of the HMO.

(3) The application for redomestication shall be deemed approved unless the Insurance Commissioner has, within thirty (30) days after the filing of a complete redomestication application, entered his order disapproving the redomestication.

(b) Any domestic HMO may, upon the approval of the Insurance Commissioner, transfer its domicile to any other state in which it is admitted to transact the business of an HMO, and upon such a transfer, shall cease to be a domestic HMO, and shall be admitted to this state if qualified as a foreign HMO. The Insurance Commissioner shall approve any such proposed transfer unless he shall determine such transfer is not in the interest of the enrollees, members and subscribers of this state.

(c) The certificate of authority, agents appointments and licenses, rates, and other items which the Insurance Commissioner allows, in his discretion, which are in existence at the time any HMO licensed to transact the business of an HMO in this state transfers its corporate domicile to this or any other state by merger, consolidation or any other lawful method shall continue in full force and effect upon such transfer if such insurer remains duly qualified to transact the business of an HMO in this state. All outstanding group or individual contracts of any transferring HMO shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the Insurance Commissioner. Every transferring HMO shall file new group or individual contract forms with the Insurance Commissioner on or before the effective date of the transfer, but may use existing group or individual contract forms with appropriate endorsements if allowed by, and under such conditions as approved by the Insurance Commissioner. However, every such transferring HMO shall notify the Insurance Commissioner of the details of the proposed transfer, and shall file promptly, any resulting amendments to corporate documents required to be filed with the Insurance Commissioner.

(d) Applications for redomestication to this State shall be made by the filing of an HMO Form R as set forth in Appendix F of this Chapter.

365:40-3-17. Forms: general requirements

(a) **Forms A, B, C, D, E and R.** HMO Forms A, B, C, D, E and R, as set forth in Appendices A, B, C, D, E, and F of this Chapter, are intended to be guides in the preparation of the statements required by Article 16A of Title 36, Section 6930 of Title 36 and O.A.C. 365:40-3-12, 13 and 16. They are not intended to be blank forms that are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item

is inapplicable, or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(b) **Filing statements.** Two (2) complete copies of each statement, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Insurance Commissioner by personal delivery to the Office of the Insurance Commissioner in Oklahoma City, Oklahoma, or by mail addressed to the Insurance Commissioner of the State of Oklahoma, P. O. Box 53408, Oklahoma City, OK 73152-3408. A copy of an HMO Form C shall be filed in each state in which an HMO is authorized to do business, if the HMO authority of that state has notified the HMO of its request in writing, in which case the HMO has thirty (30) days from receipt of the notice to file such form. At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(c) **Format of statements.** Statements should be prepared on paper 8 1/2" x 11" in size and preferably bound at the top or the top left hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language, and monetary values shall be stated in United States Currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States Currency.

365:40-3-18. Forms: incorporation by reference, summaries and omissions

(a) **Incorporated by reference.** Information required by an item of HMO Forms A, B, D, E, or R as set forth in Appendices A, B, D, E and F of this Chapter may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of HMO Forms A, B, D, E or R provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Insurance Commissioner that were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matters shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(b) **Summary or outline of document.** Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Insurance Commissioner that was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of such documents is required to be filed with a schedule identifying the omitted documents and setting forth the material details in which the omitted documents differ from the documents filed.

(c) **Forms: additional information and exhibits.** In addition to the information expressly required to be included in HMO Forms A, B, C, D, E and R, as set forth in Appendices A, B, C, D, E and F of this Chapter, the Insurance Commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as he/she may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to HMO Forms A, B, C, D, E or R, as set forth in Appendices A, B, C, D, E and F of this Chapter, shall include on the top of the cover page the phrase: "Change Number [insert number] to" and shall indicate the date of the change and not the date of the original filing.

365:40-3-19. Acquisition of control; statement filing (HMO Form A)

(a) **HMO Form A.** A person required to file a statement pursuant to Section 6930 of the HMO Act and Section 1653 of the Holding Company Act shall furnish the required information on HMO Form A, hereby made a part of this section, as set forth in Appendix A of this Chapter. Such person shall also furnish the required information on HMO Form E, as set forth in Appendix E of this Chapter.

(b) **Amendments to applications.** The applicant shall promptly advise the Commissioner of any changes in the information so furnished on HMO Form A arising subsequent to the date upon which such information was furnished, but prior to the Commissioner's disposition of the application.

(c) **Identification of Section 6930/Section 1653(a) Health Maintenance Organizations.**

(1) **Domestic HMO name.** The name of the domestic HMO on the cover page of an HMO Form A should be indicated as follows: "ABC HMO, a subsidiary of XYZ Holding Company."

(2) **Reference to subsidiary HMO and person being acquired.** Where an HMO is being acquired, references to "the HMO" contained in HMO Form A (Appendix A of this Chapter) shall refer to both the domestic subsidiary HMO and the person being acquired.

365:40-3-20. Pre-acquisition notification

If a domestic HMO, including any person controlling a domestic HMO, is proposing a merger or acquisition pursuant to Section 6930 of the HMO Act and Section 1653(a) of the Holding Company Act, that person shall file a preacquisition notification form, HMO Form E, as set forth in Appendix E of this Chapter. In addition to the information required by HMO Form E, the Commissioner may require an expert opinion as to the competitive impact of the proposed acquisition.

365:40-3-21. Annual registration of HMOs; statement filing (HMO Form B)

(a) **HMO Form B.** An HMO filing an annual registration statement pursuant to O.A.C. 365:40-3-12 shall furnish the required information on HMO Form B as set forth in Appendix B of this Chapter.

(b) **Summary registration.** An HMO filing an annual registration statement pursuant to O.A.C. 365:40-3-12 is also required to furnish information required on HMO Form C, as set forth in Appendix C of this Chapter. An HMO shall file a copy of HMO Form C in each state in which the HMO is authorized to do business, if requested by the HMO authority/agency of that state.

(c) **Amendments to HMO Form B.**

(1) **15 day amendments.** An amendment to HMO Form B (Appendix B of this Chapter) shall be filed within 15 days after the end of any month in which there is a material change to the information provided in the annual registration statement.

(2) **Filing date amendments.** Amendments shall be filed in the HMO Form B format, as set forth in Appendix B of this Chapter, with only those items which are being amended and reported. Each amendment shall include at the top of the cover page "Amendment No. [insert number] to HMO Form B for [insert year]" and shall indicate the date of the change and not the date of the original filing.

(d) **Alternative and consolidated registrations.**

(1) **Registration statement for affiliates.** Any authorized HMO may file a registration statement on behalf of any affiliated HMO or HMOs which are required to register under Section 365:40-3-12. A registration statement may include information not required by the Holding Company Act regarding any HMO in the insurance holding company system even if such HMO is not authorized to do business in this State. In lieu of filing a registration statement on HMO Form B (Appendix B of this Chapter), the authorized HMO may file a copy of the registration statement or similar report which it is required to file in its State of domicile, provided:

(A) the statement or report contains substantially similar information required to be furnished on HMO Form B; and

(B) the filing HMO is the principal company in the insurance holding company system.

(2) **Principal company in holding company.** The question of whether the filing HMO is the principal company in the insurance holding system is a question of fact and an HMO filing a registration statement or reporting in lieu of HMO Form B (Appendix B of this Chapter) on behalf of an affiliated HMO, shall set forth a brief statement of facts which will substantiate the filing HMO's claim that it, in fact, is the principal HMO in the insurance holding company system.

(3) **Section 365:40-3-12(f) or (g).** Any HMO may take advantage of the provisions of Section 365:40-3-12(f) or (g) without obtaining the prior approval of the Insurance Commissioner. The Insurance Commissioner, however, reserves the right to require individual filings if he/she deems such filings necessary in the interest of clarity, ease of administration or the public good.

(e) **Disclaimers and termination of registration.**

(1) **Disclaimer of affiliation.** A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") shall contain the following information:

(A) the number of authorized, issued and outstanding voting securities of the subject.

(B) with respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly.

(C) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person.

(D) a statement explaining why such person should not be considered to control the subject.

(2) **Termination of registration.** A request for termination of registration shall be deemed to have been granted unless the Insurance Commissioner notifies the registrant otherwise within 30 days after receipt of the request.

365:40-3-22. Dividend to stockholders

(a) A domestic HMO shall not pay any ordinary cash dividend to stockholders except out of that part of its available surplus funds which is derived from realized net profits on its business (positive unassigned funds). The restriction shall also apply to extraordinary dividends as defined in O.A.C. 365:40-3-13.

(b) A dividend otherwise proper may be payable out of the HMO's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

365:40-3-23. Extraordinary dividends and other distributions

(a) **Request for approval of extraordinary dividends.** Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(1) the amount of the proposed dividend;
(2) the date established for payment of the dividend;
(3) a statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
(4) a copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
(A) the amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the HMOs own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
(B) total capital and surplus as of the 31st day of the December next preceding;
(C) the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-months periods; and
(D) the dividends paid to stockholders excluding distributions of the HMO's own securities in the preceding two (2) calendar years.
(5) a balance sheet and statement of income for the period intervening from the last annual statement filed with the Insurance Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and
(6) a brief statement as to the effect of the proposed dividend upon the HMO's surplus and the reasonableness of surplus in relation to the HMO's outstanding liabilities and the adequacy of surplus relative to the HMO's financial needs.
(b) **Report of dividends and distributions.** Subject to Section 365:40-3-13, each registered HMO shall report to the Commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof, including the same information required by Section 365:40-3-13(a) and (b).

365:40-3-24. Adequacy of surplus

The factors set forth in Section 365:40-3-13(d) are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an HMO's surplus, no single factor is necessarily controlling. The Commissioner, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the HMO. In comparing the surplus maintained by other HMOs, the Commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

365:40-3-25. Failure to file

Any failure of an HMO, without just cause, to timely file any registration statement, summary or other information as required by the HMO Act or this Part is a violation of this regulation.

PART 5. MISCELLANEOUS

365:40-3-30. Liabilities

Liabilities shall be computed in accordance with the provisions of the NAIC Accounting Practices and Procedures Manual of the NAIC.

365:40-3-31. Name of HMO

(a) No HMO shall be authorized to transact the business of an HMO in Oklahoma which has or uses a name so similar to that of any HMO already so authorized as to cause uncertainty or confusion; except, that in case of conflict of names between two HMOs, the Insurance Commissioner may permit or require the newly-authorized insurer to use in Oklahoma such supplementation or modification of its name as may reasonably be necessary to avoid such conflict.
(b) No insurer shall be authorized to transact the business of an HMO in Oklahoma which has or uses a name which tends to deceive or mislead as to the type of organization of the HMO.

365:40-3-32. Standards for determining hazardous financial condition

The following may be considered by the Insurance Commissioner to determine whether the continued operation of any HMO might be deemed to be hazardous to the enrollees, members, subscribers, creditors or the general public. The Commissioner may consider:
(1) financial condition and market conduct examination reports;
(2) the National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;
(3) the ratios of commission expense, general business expense, group and individual contract benefits and reserve increases as to annual premium and net investment income;
(4) the HMO's assets;
(5) the HMO's reinsurance program;
(6) the HMO's operating results for the last twelve month period or any shorter period of time;
(7) the financial condition of the HMO's affiliates, subsidiaries, or reinsurers;
(8) contingent liabilities, pledges or guaranties;
(9) whether any "controlling person" of an HMO is delinquent in the transmitting to, or payment of, net premiums to such HMO;
(10) the age and collectibility of receivables;
(11) competence and fitness of the management of the HMO, including officers, directors, or any other person

who directly or indirectly controls the operation of such HMO;

(12) whether the HMO has failed to respond to the Insurance Commissioner's inquiries relative to the condition of the HMO or has furnished false and misleading information in response to such inquiries;

(13) whether the HMO either has filed any false or misleading sworn financial statements, or has released false or misleading financial statements to lending institutions or to the general public;

(14) whether the HMO lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(15) whether the HMO has experienced or will experience in the foreseeable future cash flow and/or liquidity problems.

365:40-3-33. Commissioner's authority

(a) For the purposes of making a determination of an HMO's financial condition under the Act, the Insurance Commissioner may, if consistent with the facts and existing law:

(1) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceedings;

(2) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

(4) Increase the HMO's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial likelihood that the HMO will be called upon to meet the obligation undertaken within the next 12-month period.

(b) If the Insurance Commissioner determines that the continued operation of the HMO licensed to transact business in this state may be hazardous to the enrollees, members, subscribers or the general public, then the Insurance Commissioner may, upon his determination, issue an order making such finding and including a list of requirements necessary to abate such finding. Such list may include, among other things:

(1) reduce the total amount of present and potential liability for group and individual contract benefits by reinsurance;

(2) reduce, suspend or limit the volume of business being accepted or renewed;

(3) reduce general and commission expenses by specified methods;

(4) increase the HMO's capital and surplus;

(5) suspend or limit the declaration and payment of dividend by an HMO to its stockholders or to its enrollees, members or subscribers;

(6) file reports in a form acceptable to the Insurance Commissioner concerning the market value of an HMO's assets;

(7) limit or withdraw from certain investments or discontinue certain investment practices to the extent the Insurance Commissioner deems necessary;

(8) document the adequacy of premium rates in relation to the risks;

(9) file, in addition to regular annual and quarterly financial statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on such format as directed by the Insurance Commissioner.

SUBCHAPTER 5. LIFE, ACCIDENT & HEALTH DIVISION AND CONSUMER ASSISTANCE AND CLAIMS DIVISION RULES

PART 1. GENERAL PROVISIONS

365:40-5-1. Definitions

When used in this Subchapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"**Affiliation period**" means a period that must expire before the coverage becomes effective.

"**Bona fide association**" means an association which:

(A) Has been actively in existence for at least 5 years;

(B) Has been formed and maintained in good faith for purposes other than obtaining insurance;

(C) Does not condition membership in the association on any health-status-related factor that relates to an individual, including an employee of an employer or a dependent of an employee;

(D) Makes health coverage offered through the association available to all members regardless of any health-status related factor that relates to such members or individuals eligible for coverage through a member; and

(E) Does not make health coverage offered through the association available other than in connection with a member of the association.

"**Child**" means natural children, stepchildren, adopted children, children placed for adoption, and children under legal guardianship.

"**Claim reimbursement**" means repayment from an HMO to a subscriber for services rendered by a noncontracting provider, or direct payment from an HMO to a noncontracting provider.

"**Eligible Dependent**" means a spouse, an unmarried child under the age of eighteen (18) years, an unmarried child under the age of twenty-three (23) who is a full-time student and who is financially dependent upon the subscriber, and an unmarried child of any age who is medically certified as disabled and dependent upon the subscriber.

"**Grievance**" has the same meaning as in 36 O.S. § 6902 of the HMO Act.

"Group" means an employee group or another aggregation of individuals who wish to purchase or who have purchased HMO membership. The group shall be composed of at least two (2) individuals, and shall not be established on the basis of race. Unless specifically exempted in this Chapter, any provision addressed to groups shall apply to small and large groups.

"Health professionals" means professionals, including physicians, engaged in the delivery of health services who are licensed, certified, or practice under other authority consistent with State law.

"Inquiry" means an oral or written statement to the Department from a member or other resident of this state expressing misunderstanding, dissatisfaction or disagreement with an activity of an HMO, or reporting a possible violation of this Chapter or the laws of this state by an HMO. Anonymous statements shall be considered as inquiries.

"Large group" means a group of at least 51 employees.

"Late enrollee" means, with respect to coverage under a group contract, a subscriber or dependent who enrolls under the contract other than during the first effective date in which the subscriber or dependent is eligible to enroll under the contract, or a special enrollment period.

"Non-basic health care services" means health care services other than basic health care services.

"Noncontracting provider" means a health service provider not having an HMO contract that includes financial hold harmless language as described in 36 O.S. § 6913.

"Out-of-area services" means the health care services that an HMO covers when its enrollees are outside of the service area.

"Physician" means any person holding a valid license to practice medicine and surgery, osteopathy, chiropractic, podiatry, optometry, or dentistry, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes.

"Primary care physician" means a physician who supervises, coordinates, and provides initial and basic care to enrollees, and who initiates their referral for specialist care and maintains continuity of patient care.

"Replacement coverage" has the same meaning as in 36 O.S. § 6902 of the HMO Act.

"Service area" means the geographic area as defined through zip codes, census tracts, or other geographic subdivisions, found by the Department to be the area within which the HMO provides or arranges for basic and supplemental health care services that are available and accessible to its enrollees as required by the Act and this Chapter.

"Small group" means a group composed of not less than two and not more than 50 employees as defined in the Small Employers Health Insurance Reform Act, 36 O.S. § 6511, et seq.

"Special Enrollment Period" means a time when a plan shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

(A) The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.

(B) The employee stated in writing at such time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or issuer required such a statement as such time and provided the employee with notice of such requirement and the consequences of such requirement at such time.

(C) The employee's or dependent's coverage described in subparagraph 1

(i) was under a COBRA continuation provision and the coverage under such provision was exhausted; or

(ii) was not under such a provision and either the coverage was terminated as a result of loss of eligibility for the coverage (including as a result of legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment or employer contributions toward such coverage were terminated.

PART 3. RATING SYSTEM

365:40-5-10. Definitions

When used in this Part the term "Rating System" means the method or combination of methods which the HMO uses to calculate enrollee premiums, and is limited to community rating, community rating by class, adjusted community rating or a combination of all. An HMO may fix rates of payment under either a system of community rating, community rating by class, adjusted community rating or under all three systems. However, the HMO may use only one such system for setting rates for any group at any one time.

365:40-5-11. Community rating

Under community rating, rates of payments may be determined on a per-person or per-family basis and may vary with the number of persons in a family, but except as otherwise authorized in this paragraph, such rates must be equivalent for all individuals and for all families of similar composition. This does not preclude changes in the rates of payments for health services based on a community rating system which are established for new enrollments or re-enrollments and which changes do not apply to existing contracts until the renewal of such contracts. Only the following differentials in rates of payments may be established under such system:

(1) Nominal differentials in such rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of subscribers:

(A) Individual (non-group) subscribers (including their families).

(B) Small groups of subscribers.

(C) Large groups of subscribers.

(2) Nominal differentials in such rates may be established to reflect the compositing of the rates of payment in a systematic manner to accommodate group purchasing practices of the various employers.

(3) Differentials in such rates may be established for subscribers enrolled under any governmental authority or program authorized by United States Code, or under any health benefits program for employees of States, political subdivisions of States, and other public entities.

(4) An HMO may establish a separate community rate for separate regional components of the organization upon satisfactory demonstration of the following:

(A) Each such regional component is geographically distinct and separate from any other regional component.

(B) Enrollment is established with respect to the individual regional component, rather than with respect to the parent HMO.

(C) Each such regional component provides substantially the full range of basic health care services to its enrollees without extensive referral between components of the organization for such services, and without substantial utilization by any two such components of the same health care facilities. The separate community rate for each such regional component of the HMO must be based on the different costs of providing health services in such regions.

365:40-5-12. Community rating by class

Under "community rating by class," rates are fixed by groups for individuals and families, and must be equivalent for all individuals or for all families in the same group. A class is actuarially derived or developed based on factors which reasonably predict differences in the use of HMO services. Age, sex, family size and marital status factors need not be justified.

365:40-5-13. Adjusted community rating

Under "adjusted community rating" rates are fixed on the basis of revenue requirements for providing services to the group, except that rates for a group of less than 50 persons may not be fixed at rates greater than 115 percent of the rate that would be fixed under community rating or community rating by class.

365:40-5-14. Rates to reflect risk-sharing arrangements

An HMO may establish differentials based on financial risk-sharing arrangements with organizations or entities which have contracted with the HMO to provide selected basic health care services to members of said organizations or entities, as permitted by 36 O.S. § 6902(1) and otherwise permitted by the HMO Act or this Chapter.

PART 5. BASIC AND SUPPLEMENTAL HEALTH CARE SERVICES

365:40-5-20. Basic health care services

Basic health care services shall include:

(1) Physician services including consultant and referral services by a physician, and other health professional services as necessary to provide allopathic, osteopathic, chiropractic, podiatric, optometric, and psychological services. If a service of a physician may also be provided under applicable State law by another type of health professional, an HMO may provide the service through these other health professionals.

(2) Outpatient services including diagnostic services, treatment services and x-ray services, for patients who are ambulatory and may be provided in a non-hospital based health care facility or at a hospital.

(3) Inpatient hospital services including room and board, general nursing care, meals and special diets when medically necessary, use of operating room and related facilities, use of intensive care unit and services, x-ray services, laboratory, and other diagnostic tests, drugs, medications, biologicals, anesthesia and oxygen services, special duty nursing when medically necessary, radiation therapy, inhalation therapy, perfusion, and administration of whole blood and blood plasma.

(4) Outpatient services and inpatient hospital services including short-term rehabilitation services and physical therapy which the HMO expects can result in the significant improvement of an enrollee's condition within two months,

(5) Medically necessary emergency health services, which shall include instructions to enrollees on how to get medically necessary emergency health services both in and out of the service area.

(6) Twenty outpatient visits per enrollee per year, as may be necessary and appropriate for short-term evaluative or crisis intervention mental health services, or both.

(7) Diagnosis, medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs, including

(A) Diagnosis and medical treatment for the abuse of or addiction to alcohol and drugs including detoxification for alcoholism or drug abuse on either an outpatient or inpatient basis, whichever is medically determined to be appropriate, in addition to the other required basic health care services for the treatment of other medical conditions.

(B) Referral services for either medical or for nonmedical ancillary services. Medical ancillary services shall be a part of basic health care services; nonmedical ancillary services (such as vocational rehabilitation and employment counseling) and prolonged rehabilitation services in a specialized inpatient or residential facility need not be a part of basic health care services.

(8) Diagnostic laboratory and diagnostic and therapeutic radiological services in support of basic health care services.

(9) Home health services provided at an enrollee's home by health care personnel, as prescribed or directed by the responsible physician or their authority designated by the HMO.

(10) Preventive health services, which shall be made available to enrollees and shall include at least the following:

(A) Services for children from birth to age 21 as determined by the American Academy of Pediatrics in "Guidelines for Health Supervision";

(B) Immunizations for adults and children as recommended by the Advisory Committee on Immunization Practices

(ACIP) Centers for Disease Control and Prevention, except those required for foreign travel and employment;

(C) Periodic health evaluations for adults to include voluntary family planning services; and

(D) Preventive services identified through the HMO quality assurance program designed to contribute to achieving the U.S. Department of Health and Human Services "Healthy People 2010" objectives.

(11) Medically necessary eye care services for detection and treatment of diseases or injury to the eye.

(12) Inpatient and outpatient care for treatment of the birth defect known as cleft lip or cleft palate or both including medically necessary oral surgery, orthodontics, and otologic, audiological, and speech/language treatment.

365:40-5-21. Supplemental health care services

Supplemental health care services of an HMO may include the following:

(1) Corrective appliances and artificial aids.

(2) Eyeglasses and hearing care not included as a basic health care service.

(3) Dental services.

(4) Mental health services not included as a basic health care service.

(5) Long-term physical therapy and rehabilitative services.

(6) Cosmetic surgery, unless medically necessary.

(7) Prescribed drugs and medicines incidental to outpatient care. Supplemental coverage for prescription drugs shall also provide coverage of off-label uses of prescription drugs used in the treatment of cancer or the study of oncology. Coverage shall include the approval of oncology (chemotherapeutic) drugs for off-label indications when used for malignant disease, when the safety and effectiveness of use for this indication has been recommended, supported and demonstrated by at least one controlled clinical trial published in a nationally recognized peer reviewed journal or when at least one of the standard pharmacy compendia (United States Pharmacopoeia Dispensing Information [USPDI], American Society of Health-System Pharmacists Drug Information [AHFS Drug Information] or American Medical Association Drug Evaluations [AMADE]) lists the drug to be accepted as safe and effective for this indication. This will not include the off-label use of these agents in the treatment of non-malignant disease.

(8) Ambulance services, unless medically necessary.

(9) Care for military service connected disabilities for which the enrollee is legally entitled to services and for which facilities are reasonably available to this enrollee.

(10) Care for conditions that State or local law requires be treated in a public facility.

(11) Custodial or domiciliary care.

(12) Experimental medical, surgical, or other experimental health care procedures, unless approved as a basic health care service by the policy making body of the HMO.

(13) Personal or comfort items and private rooms, unless necessary during inpatient hospitalization.

(14) Whole blood and blood plasma.

(15) Durable medical equipment for home use (such as wheel chairs, surgical beds, respirators, dialysis and machines).

(16) Health care services which are unusual or infrequently provided and not necessary for the protection of individual health, as approved by the Department upon application by the HMO. "Unusual or infrequently used health services" means those health services which are projected to involve fewer that 1 percent (1%) of the encounters per year for the entire HMO enrollment, or, those health services the provision of which, given the enrollment projection of the HMO and generally accepted staffing patterns, is projected will require less than 0.25 full time equivalent health professionals.

365:40-5-22. Benefit changes

Each HMO shall provide to each group and individual enrollee a written statement of benefit changes for the upcoming benefit year. The statement shall identify clearly and concisely those aspects of the proposed benefits plan which differ from the current benefits plan. Such notice should be provided as soon as available, but at least thirty (30) days prior to the date by which the group or individual enrollees must choose coverage. When an employer, rather than an HMO, requests changes for the upcoming benefit year that does not allow for a notification of at least thirty (30) days, the HMO shall provide notice as soon as reasonably possible.

365:40-5-23. Identification cards

The subscriber and enrollee identification card issued by an HMO shall clearly indicate the name, mailing address, and phone number for submission of requests for payment or reimbursement of claims. If the HMO requires claims to be submitted to an entity other than the licensed HMO, then the identification card shall disclose that requirement. The HMO shall not distribute a subscriber and enrollee identification card until its form has been approved by the Department.

PART 7. POINT OF SERVICE OPTION

365:40-5-30. Definitions

When used in this Part, "point of service option" means a benefit that allows a member to submit claims for payment or reimbursement of nonemergency health services obtained from noncontracting providers. It also may mean a benefit for non-emergency services obtained from a contracting provider without a referral or authorization.

365:40-5-31. Purpose/scope

(a) The provisions of this Part do not apply to emergency care.

(b) Each HMO shall submit this benefit for the Department's approval before offering the benefit to members.

(c) This benefit is optional, and the HMO has the following flexibility:

(1) The HMO is not required to offer this benefit;

(2) The HMO may decide which services will be offered or excluded;

(3) The HMO may limit the groups to whom this benefit is offered, but the benefit must be offered to all persons within the group;

(4) If individual contracts are offered, the HMO may limit the individuals to whom this benefit is offered;

(5) The HMO may set annual dollar limits on services provided through this benefit;

(6) The HMO may use enrollee cost-sharing for this benefit. This cost-sharing may be accomplished through premium, copayment or deductible; and,

(7) The HMO may require precertification of services provided through this benefit.

(d) Under no circumstances shall the member be required to pay for any portion of these services, other than as provided in the member's contract.

(e) The marketing materials of any HMO offering this benefit must be written in a manner so that the enrollee will easily understand the services included, the procedures to be followed, and the costs.

(f) This benefit may be supplemented by a reasonable deductible. The deductible should be set to discourage excessive use but must not be prohibitively high. Copayments cannot exceed 50% of the HMO's allowable charge for any single service.

(g) The offering of this benefit does not relieve the HMO of the duty to ensure that all basic health care services are available and accessible.

(h) The requirements of Part 23 of this Subchapter shall apply to any claims for payment or reimbursement submitted under this benefit.

365:40-5-32. Responsibilities of the HMO

(a) Each HMO that offers a point of service option shall collect and report to the Department the number of enrollees who access the benefit, the types and volumes of services received, and the costs to enrollees and the HMO.

(b) Each HMO shall inform enrollees about the following:

(1) Any premium and cost-sharing charges;

(2) Annual out-of-pocket limits;

(3) Annual and maximum benefit limits for out-of-plan services; and,

(4) Potential financial liability for services for which payment could be denied because the service is not a covered benefit, or the dollar limit is exceeded.

(c) Each HMO shall file with the Department all marketing and educational material for the point of service option prior to use of that material.

PART 9. HMO REQUIREMENTS AND PROHIBITIONS

365:40-5-40. Services to members

Within the HMO's service area, basic health care services and those supplemental health care services for which enrollees have contracted to be provided by the HMO shall be:

(1) Provided or arranged by the HMO, except as described in Parts 7, 13 and 19 of this Subchapter. Basic health care services shall be provided for HMO members as needed and without limitations as to time and cost.

(2) Available and accessible to each of the HMO's enrollees with reasonable promptness with respect to:

(A) Geographic location, hours of operation, and provisions for after-hours services (medically necessary emergency services shall be available and accessible twenty-four (24) hours a day, seven (7) days a week). An HMO that has a service area located in a non-metropolitan area may make a basic health care service available outside its service area if that basic health care service is not a primary care or emergency care service and if there is an insufficient number of providers of that basic health care service within the service area who will provide that service to enrollees of the HMO.

(B) Staffing patterns within generally accepted norms for meeting the projected enrollment needs.

(C) The type of health professional so that availability of health professionals is adequate to meet the enrollees' needs.

(3) Provided in a manner that assures continuity, except as described in Part 7 of this Subchapter, including but not limited to:

(A) Provision of a health professional who is primarily responsible for coordinating the enrollee's overall health care.

(B) Development of a health (including medical) record keeping system through which pertinent information relating to the health care of the patient is accumulated and is readily available to appropriate professionals.

(C) Coordination of the enrollee's participation in the selection of an alternative type of health care professional.

365:40-5-41. Membership

(a) An HMO shall not expel or refuse to re-enroll any enrollee, nor refuse to enroll individual members of a group, or establish rules for eligibility that are based on health status factors, health care needs, or age of the enrollee or individual.

(b) An HMO shall not require an individual within a group to pay a higher premium or contribution than would a similarly situated individual, based on a health-status factor.

(c) Nothing in this Section prohibits an HMO from requiring that, as a condition of continued eligibility for enrollment, dependents of a subscriber, upon reaching a specified age, convert to non-group enrollment.

365:40-5-42. Individual conversion contracts

(a) Each HMO shall offer an individual conversion contract to a subscriber (and his or her enrolled dependents) if coverage under a group contract would otherwise terminate for any of the following:

(1) A subscriber who terminates his or her employment.

(2) Each enrollee who would otherwise cease to be eligible for HMO enrollment because of his or her age or the death or divorce from a subscriber.

(3) Any circumstances beyond the subscriber's control which leave the subscriber without alternative coverage.

(b) An HMO shall not be required to issue an individual conversion contract if any of the following occur:

(1) The enrollee becomes eligible for or covered by other comparable coverage.

(2) The group contract is terminated or is not renewed, except as specified in Part 13 of this Subchapter.

(3) The enrollee's coverage is terminated for cause.

(4) The enrollee does not enroll for individual conversion coverage within 31 days.

(5) Except for emergency services, an enrollee moves out of the HMO's service area.

(c) Nothing in Part 13 of this Subchapter requires an HMO offering benefit plans only to group health plans or through an association to offer coverage in the individual market.

365:40-5-43. Premiums/co-payments

(a) Each HMO shall provide or arrange basic health care services for a basic health care services payment which:

(1) Is paid on a periodic basis without regard to the dates these services are provided;

(2) Is fixed without regard to the frequency, extent, or kind of basic health care services furnished;

(3) Is fixed under a rating system which generates funds sufficient to meet the HMO's financial plan, and under which the rates are reasonable for the health services provided; and

(4) May be supplemented by nominal co-payments for specific basic health care services. Each HMO may establish one or more co-payment options calculated on the basis of a rating system.

(A) An HMO may not impose co-payment charges that exceed fifty (50) percent of the total cost of providing any single service to its enrollees, or in the aggregate more than twenty (20) percent of the total cost of providing all basic health care services.

(B) An HMO shall not impose on any subscriber or enrollee, in any calendar year, co-payment charges of more than two hundred (200) percent of the annual premium charged for an option with no co-payments.

(C) Co-payments applied to a service must be equal for all providers unless the unequal co-payments are based on differences in the cost to the HMO for the service.

(b) Basic health care services shall be provided for an illness or injury covered under a workers' compensation law or an insurance policy. The HMO may charge or authorize the provider to charge:

(1) The insurance carrier, employer, or other entity which is required to pay for the services; and

(2) The enrollee, to the extent that the enrollee has been paid under the law or policy for the services.

(c) An HMO may require payments for supplemental health care services in addition to the payments for basic health care services. Or, an HMO may include supplemental health care services in the basic health care services for a basic health care service payment.

(1) Supplemental health services payments may be made in any agreed upon manner, such as prepayment or fee-forservice.

(2) Supplemental health services may be limited as to time and cost.

365:40-5-44. Internal grievance system

A grievance system shall be established and maintained by an HMO to provide reasonable procedures for the prompt and effective resolution of written grievances pursuant to the HMO Act.

(1) An HMO shall provide grievance forms to be given to enrollees who wish to register written grievances. Such forms shall include the address and telephone number to which grievances must be directed and shall also specify required time limits imposed by the HMO.

(2) The grievance system shall provide for written acknowledgement of any grievance within seven (7) days from the date the grievance is registered with the HMO. Each grievance shall be resolved or finally determined within one hundred twenty (120) days after the grievance is registered. This period may be extended in the event of a delay in obtaining the documents or records from a non-contracting provider necessary for the resolution of the grievance, or by the mutual written agreement of the HMO and the enrollee.

(3) If enrollee grievances may be resolved through a specified arbitration agreement, the enrollee shall be advised in writing of his or her rights and duties under the agreement at the time the grievance is registered. Any such agreement must be accompanied by a statement setting forth in writing the terms and conditions of binding

arbitration. Any HMO that makes such binding arbitration a condition of enrollment must fully disclose this requirement to its enrollees in the contract and evidence of coverage.

(4) An enrollee or any other person may seek the assistance of the Insurance Commissioner at any time whether or not a written grievance is submitted to an HMO by an enrollee.

365:40-5-45. Guaranteed renewal

(a) Except as otherwise provided in this section, an HMO that issues a group contract must renew or continue in force such coverage at the option of the contractholder.

(b) An HMO may nonrenew or discontinue a group contract based only on one or more of the following conditions:

(1) The contractholder has failed to pay premiums or contributions in accordance with the terms of the contract or the HMO has not received timely premium payments.

(2) The contractholder has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the contract.

(3) The contractholder has failed to comply with a material provision of their group contract with the HMO that relates to rules for employer contributions or group participation.

(4) The HMO is ceasing to offer a particular type of coverage in a market.

(5) There are no longer enrollees who live or work in the service area.

(6) In the case of group health coverage that is made available only through a bona fide association, the membership of an employer in the association, on the basis of which the coverage is provided, ceases, but only if such coverage is terminated uniformly without regard to any health-status-related factors that relate to any covered individuals.

(c) An HMO shall not impose pre-existing condition limitations.

(d) An HMO may apply an affiliation period not to exceed two (2) months (or three (3) months for late enrollees). Affiliation periods shall be applied uniformly without regard to any health status-related factors. No premium shall be charged for the affiliation period. The HMO is not required to provide health care services or benefits during such period.

365:40-5-46. Small group offering

An HMO shall accept every small group employer and every eligible individual of that employer that applies for coverage in accordance with the Oklahoma Small Employer Health Insurance Reform Act, 36 O.S. § 6511, et seq.

365:40-5-47. Special enrollment periods

(a) An HMO that issues a group contract shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the contract, or a dependent of such an employee if the dependent is eligible but not enrolled for coverage under such contract, to enroll for coverage under the terms of the contract if each of the following conditions is met:

(1) The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent. For the purpose of this section, the terms "group health plan" and "health insurance coverage" have the same meaning ascribed in Section 2791 of the Federal Public Health Service Act;

(2) The employee stated in writing at such time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or HMO, if applicable, required such a statement at such time and provided the employee with notice of such requirement and the consequences of such requirement at such time;

(3) The employee's or dependent's coverage described in paragraph (1) above:

(A) Was under a COBRA continuation provision or other continuation and the coverage under such provision was exhausted; or

(B) Was not under such a provision and the coverage was terminated as a result of loss of eligibility for the coverage, including legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment, or the coverage was terminated as a result of the termination of employer contributions toward such coverage; and

(4) Under the terms of the plan, the employee requests such enrollment not later than thirty (30) days after the date in O.A.C. 365:40-5-47(a)(3)(A) or O.A.C. 365:40-5-47(a)(3)(B) occurred.

(b) For dependent beneficiaries, the HMO shall provide for a dependent special enrollment period described in Subsection (c) of this Section during which the person, or, if not otherwise enrolled, the employee may be enrolled under the contract as a dependent of the employee, and in the case of the birth or adoption of a child, the spouse of the employee may be enrolled as a dependent of the employee if such spouse is otherwise eligible for coverage, if:

(1) A group contract makes coverage available with respect to a dependent of an employee;

(2) The employee is a participant under the contract, or has met any waiting period applicable to becoming a participant under the contract, and is eligible to be enrolled under the contract except for a failure to enroll during a previous enrollment period; and

(3) A person becomes such a dependent of the employee through marriage, birth, or adoption or placement for adoption, the HMO shall provide for a dependent special enrollment period described in Subsection (c) of this Section during which the person, or, if not otherwise enrolled, the employee, may be enrolled under the contract as a dependent of the employee, and in the case of the birth or adoption of a child, the spouse of the employee may be enrolled as a dependent of the employee if such spouse is otherwise eligible for coverage.

(c) A dependent special enrollment period under Subsection (b) of this Section shall be a period of not less than thirty (30) days and shall begin on the later of:

(1) The date that dependent coverage is made available; or

(2) The date of the marriage, birth, adoption or placement for adoption.

(d) If an employee seeks to enroll a dependent during the first thirty (30) days of such a dependent special enrollment period, the coverage of the dependent shall become effective:

(1) In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(2) In the case of a dependent's birth, as of the date of such birth; or

(3) In the case of dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

PART 11. COORDINATION OF BENEFITS

365:40-5-50. Purpose

The purpose of this subchapter is to permit, but not require, plans to include a coordination of benefits (COB) provision unless prohibited by federal law; to establish a uniform order of benefit determination under which plans, including HMOs, pay claims; and to avoid claim delays and misunderstandings that could otherwise result from the use of inconsistent or incompatible provisions amount Plans. It is contrary to the public policy of this state for a Plan to declare its coverage to be "excess" to all others, or always "secondary", or to reduce its benefits because of the existence of duplicate coverage in a manner other than as permitted by this regulation; or to reduce its benefits because a person covered by the Plan is eligible for any other coverage. It is requested that courts give effect to this public policy when they consider the interrelation of Plans with order of benefit determination rules which comply with this subchapter and Plans with order of benefit determination rules which differ from those set forth in this subchapter.

365:40-5-51. Definitions

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

"Allowable expense" means, unless otherwise mandated by law, any necessary, reasonable, and customary item of expense at least a portion of which is covered under at least one of the Plans covering the person for whom claim is made except where a statute requires a different definition. However, items of expense under coverage such as dental care, vision care, prescription drug or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expense to like items of expense. When a Plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an Allowable Expense and a benefit paid. The difference between the cost of a private hospital room and the cost of a semi-private hospital room shall not be deemed to be an "Allowable Expense," except for the period of time during which the patient's confinement to a private hospital room is deemed medically necessary in terms of generally accepted medical practice.

"Plan" means the following:

(A) "Plan" means any plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by:

(i) group, blanket or franchise insurance coverage,

(ii) service plan contracts, group practice, individual practice and other prepayment coverage,

(iii) any coverage under labor-management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and

(iv) any coverage under governmental programs, and any coverage required or provided by any statute.

(B) The term "Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other Plans into consideration in determining its benefits and that portion which does not.

(C) Individually underwritten and issued contracts which provide a contractual right to renewal regardless of membership in or connection with any particular organization or group shall not be considered group type contracts, irrespective of the mode or channel of premium payment and regardless of any reduction in premium the covered person may receive by virtue of such method of premium collection.

(D) The definition of a "Plan" within the COB provision of group contracts enumerates the types of coverage which the insurer may consider in determining whether other insurance exists with respect to a specific claim. Such definition:

(i) May not include individual or family policies, or individual or family subscriber contracts, except as provided in (ii) of this subparagraph and in (E) of this definition.

(ii) May include all group or group subscriber contracts as well as such group-type contracts as are not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition, at the option of the insurer and its policyholder client, whether or not individual policy forms are utilized and whether the group-type

coverage is designated as "franchise" or "blanket" or in some other fashion.

(E) The definition of "Plan" may include both group and individual automobile "no fault" contracts but, as to the traditional automobile "fault" contracts, only the medical benefits written on a group or group-type basis may be included.

(F) Interpretation of the definition of a "Plan" may not include group or group-type hospital indemnity benefits (written on a non-expense incurred basis) of $30 per day or less unless they are characterized as reimbursement type benefits but are designed to administer so as to give the insured the right to elect indemnity type benefits, in lieu of such reimbursement type benefits, at the time of claim. In any event, the amount of group and group-type hospital indemnity benefits which exceed $30 per day may be construed as being included under the definition of "Plan".

(G) School accident type coverages, written on either an individual, blanket, group or franchise basis should not be taken in to consideration in coordination of benefits. In this context, school accident type coverages are defined to mean coverage covering grammar school, middle school, and high school students for accidents only, including athletic injuries, either on a 24 hour basis or "to and from school" for which the parent pays the entire premium.

(H) If "Medicare" or similar governmental benefits are included in the definition of a "Plan", such benefits may be taken into consideration without expanding any of the definitions of this provision beyond the hospital, medical, and surgical benefits which may be provided by the governmental program.

(I) A Plan may not coordinate or design benefits so that the benefits payable are altered solely on the basis that:

(i) another plan exists; or

(ii) except with respect to Part B of Medicare, that the claimant is or could have been covered under another Plan, or

(iii) the claimant has elected an option under another Plan providing a lower level of benefits than another option for which the claimant was eligible.

"This plan" means that portion of the policy that provides the benefits that are subject to this Part.

365:40-5-52. Effect on benefits

(a) **Determining benefits.** This section shall apply in determining the benefits as to a person covered under the Plan for any claim determination period if, for the allowable expense incurred as to such person during such period, the sum of:

(1) the benefits that would be payable under this Plan in the absence of this provision, and

(2) the benefits that would be payable under all other Plans in the absence therein of provisions of similar purpose to this provision would exceed such Allowable Expenses.

(b) **Claim determination period.** As to any claim determination with respect to which this section is applicable, the benefits that would be payable under this Plan in the absence of this provision for the allowable expenses incurred as to such person during such claim determination period shall be reduced to the extent necessary to that the sum of such reduced benefits and all the benefits payable for such allowable expenses under all other Plans, except as provided in (c) of this section, shall not exceed the total of such allowable expenses. Benefits payable under another Plan include the benefits that would have been payable had claim been duly made therefore.

(c) **Coordination of benefits.** The benefits of another Plan will be ignored for the purpose of determining the benefits under this Plan if:

(1) the other Plan which is involved in (b) of this section and which contains a provision coordinating its benefits with those of this Plan would, according to its rules, determine its benefits after the benefits of this plan have been determined, and

(2) the rules set forth in (d) of this section would require this Plan to determine its benefits before such other Plan.

(d) **Order of benefit determination.** For the purpose of (c) of this section, the rules establishing the order of benefit determination are:

(1) The benefits of a Plan which covers the person on whose expenses claim is based other than as a dependent shall be determined before the benefits of a Plan which covers such person as a dependent.

(2) The following guidelines apply with respect to claims regarding dependent children:

(A) Except for cases of a person for whom claim is made as a dependent child whose parents are separated or divorced, the benefits of a plan which covers the person on which expenses claim is based as a dependent of a person whose date of birth, excluding year of birth, occurs earlier in a calendar year, shall be determined before the benefits of a Plan which covers such person as a dependent of a person whose date of birth, excluding year of birth, occurs later in a calendar year. If either Plan does not have the provisions of this paragraph regarding dependents, which results either in each Plan determining benefits before the other or in each Plan determining its benefits after the other, the provisions of this paragraph shall not apply, and the rule set forth in the Plan which does not have the provisions of this paragraph shall determine the order of benefits.

(B) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a Plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a Plan which covers the child as a dependent of the parent without custody.

(C) In the case of a person for whom claim is made as a dependent child whose parents are divorced and the parent with custody of the child has remarried, the

benefits of a Plan which covers the child as a dependent of the parent with custody shall be determined before the benefits of a Plan which covers that child as a dependent of the stepparent, and the benefits of a Plan which covers that child as a dependent of the stepparent will be determined before the benefits of a Plan which covers that child as a dependent of the parents without custody.

(D) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced, where there is a court decree which would otherwise establish financial responsibility for the medical, dental or other health care expenses with respect to the child, then, notwithstanding (B) and (C) of this paragraph, the benefits of a Plan which covers the child as a dependent of the parent with such financial responsibility shall be determined before the benefits of any other Plan which covers the child as a dependent child.

(3) When (1) and (2) of this subsection do not establish an order of benefit determination, the benefits of a Plan which has covered the person on whose expenses claim is based for the longer period time shall be determined before the benefits of a Plan which has covered such person the shorter period of time, provided that:

(A) the benefits of a plan covering the person on whose expenses claim is based as a laid-off or retired employee, or dependent of such person, shall be determined after the benefits of any other Plan covering such person as an employee, other than a laid-off or retired employee, or dependent of such person; and

(B) if either Plan does not have a provision regarding laid-off or retired employees, which results in each Plan determining its benefits after the other, then the provisions of (A) above shall not apply.

(4) When a claim under a Plan with a COB provision involves another Plan which also has a COB provision, the carriers involved should use the rules in (1) through (3) of this subsection to decide the order in which the benefits payable under the respective plans will be determined. Note:

(A) In determining the length of time an individual has been covered under a given Plan, two successive Plans of a given group shall be deemed to be one continuous Plan so long as the claimant concerned was eligible for coverage within 24 hours after the prior Plan terminated. Thus, neither a change in the amount of scope of benefits provided by a Plan, a change in the carrier insuring the Plan, nor a change from one type of Plan to another, (e.g. single employer to multiple employer Plan, or vice versa, or single employer to a Taft-Hartley Welfare Plan) would constitute the start of a new Plan for purposes of this paragraph.

(B) If a claimant's effective date of coverage under a given Plan is subsequent to the date the carrier first contracted to provide the Plan for the group concerned (employer, union, association, etc.), then, the absence of specific information to the contrary, the carrier shall assume, for purposes of this paragraph, that the claimant's length of time covered under that plan shall be measured from claimant's effective date of coverage. If a claimant's effective date of coverage under a given Plan is the same as the date the carrier first contracted to provide the Plan for the group coverage, then the carrier shall request the group concerned to furnish the date the claimant first became covered under the earliest of any prior Plans the group may have had. If such date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time his coverage under that Plan has been in force.

(5) Some Plans have order of benefit determination rules not consistent with this section which declare that the Plan's coverage is "excess" to all others, or "always secondary". This occurs because:

(A) certain Plans may not be subject to insurance section; or

(B) some group contracts have not yet been conformed to this section pursuant to the effective date.

(6) A Plan with order of benefit determination rules which complies with this section (herein called a Complying Plan) may coordinate its benefits with a Plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this section (herein called a Noncomplying Plan) on the following basis:

(A) If the Complying Plan is the Primary Plan, it shall pay or provide its benefits on a primary basis.

(B) If the Complying Plan is the Secondary Plan, it shall, nevertheless, pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the Complying Plan were the Secondary plan. In such a situation, such payment shall be the limit of the Complying Plan's liability.

(C) If the Noncomplying Plan does not provide the information needed by the Complying Plan to determine its benefits within a reasonable time after it is requested to do so, the Complying Plan shall assume that the benefits of the Noncomplying Plan are identical to its own, and shall pay its benefits accordingly. However, the Complying Plan must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the Noncomplying Plan.

365:40-5-53. Right to receive and release necessary information

For the purpose of determining the applicability of and implementing the terms of this section of this Plan or any provision of similar purpose of any other Plan, the insurer or service plan may, without the consent of or notice to any person, release to or obtain from any other insurance company or other organization or person any information, with respect to any person, which the insurer or service plan deems to be necessary for such purposes. Any person claiming benefits under

this plan shall furnish to the insurer or service plan such information as may be necessary to implement this section. Occasionally this will necessitate a carrier making payment as the primary carrier with a right of recovery in the event that subsequent investigation proves that payment as a secondary carrier should have been made.

365:40-5-54. Benefit payments

Carriers shall use the following claims administration procedures to expedite claim payments where COB is involved:

(1) **Improving exchange of benefit information.**

(A) There should be continued and improved education of claim personnel stressing accurate and prompt completion of the HIC Duplicate Coverage Inquiry (DUP-1) Form by the inquiring carrier and the responding carrier. This education effort should also be encouraged through local claim associations. An HMO may use a form substantially similar to the HIC Duplicate Coverage Inquiry (DUP-1) Form if approved by the Insurance Commissioner prior to its use.

(B) Claim personnel should be encouraged to make every effort, including use of the telephone, to speed up exchange of COB information. All carriers shall respond to inquiries at least thirty (30) days from receipt of such inquiries.

(C) Carriers should encourage building a local date file of other group plans in the area, with at least basic information on group health plans for major employers.

(2) **Time limits for payment.** Each carrier shall establish a time limit after which full or partial payment should be made. When payment of a claim is necessarily delayed for reasons other than the application of a COB provision, investigation of other valid coverage should be conducted concurrently so as to create no further delay in the ultimate payment on benefits.

365:40-5-55. Subrogation

The concept of coordination of benefits is clearly distinguishable from that of subrogation. Provisions for either may be included in a group health insurance policy without compelling the inclusion or exclusion of the other.

365:40-5-56. Small claim waivers

Carriers shall waive the investigation of possible other coverage for COB purposes on claims less than fifty dollars ($50), but if additional liability is incurred to raise the small claim above fifty dollars ($50), the entire liability may be included in the COB computation.

365:40-5-57. Public education

Each carrier has an affirmative obligation to urge its respective group policyholder-clients to take reasonable steps to assure that those insured by the group policy or subscriber contract have been exposed to reasonably concise explanations, with as little technical terminology as is commensurate with accuracy, as to the purpose and operation of COB. Such educational effort may take the form of articles in the company magazines or newspapers, speeches before the appropriate labor organization in the case of a unionized company, brochures added to pay envelopes, notices on the company bulletin board, material used by personnel department in counseling employees, and the like.

365:40-5-58. Retroactivity

Group policies or contracts which are in force at the time of promulgation of this subchapter which contain an "excess" clause, "anti-duplication" provision, or any other provision by whatever name designated under which benefits would be reduced because of other existing coverages, other than the COB provisions established in this subchapter, shall be brought into compliance by the later of the next anniversary or renewal date of the group policy or contract or the expiration of the applicable collectively bargained contract, pursuant to which they are written, if any.

365:40-5-59. Facility of payment

Whenever payments which should have been made under this Plan in accordance with this section have been made under any other Plans, the insurer or service plan shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to be warranted in order to satisfy the intent of this section, and amounts so paid shall be deemed to be benefits paid under this Plan and, to the extent of such payments, the insurer or service plan shall be fully discharged from liability under this Plan.

365:40-5-60. Right of recovery

Whenever payment has been made by the insurer with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of this section, the insurer or service plan shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as the insurer or service plan shall determine:

(1) any persons to or for or with respect to whom such payments were made;

(2) any other insurers; or

(3) service plans or any other organizations.

PART 13. TERMINATION OF MEMBERS, PROVIDERS AND CONTINUATION OF BENEFITS

365:40-5-70. Termination of group or individual contracts

(a) An HMO desiring to either terminate or not renew a group or individual contract shall provide at least sixty (60)

days advance notice of termination. Except, an HMO may terminate or not renew a contract with less than sixty (60) days notice for cause such as failure to pay premiums or fraud.

(b) A group contract or individual contract shall not be terminated except as described in Part 15 of this Subchapter and O.A.C. 365:40-5-45.

365:40-5-71. Termination of providers

An HMO shall implement a policy governing termination of providers. The policy shall include at least:

(1) Provisions for at least ninety (90) days advance notice of contract termination by either the HMO or the provider, with additional provisions for contract termination by the HMO with less than ninety (90) days notice for cause;

(2) Methods by which the termination policy shall be made known to providers and members at the time of enrollment and on a periodic basis;

(3) Written notification to each member at least thirty (30) days prior to the termination or withdrawal of a member's primary physician from the HMO's provider network and of any other physician or provider currently treating the member. The Department may waive the 30-day prior notice requirement if the HMO demonstrates that immediate termination is necessary for the protection of health, safety and welfare of members, or if the HMO demonstrates that the provider has not complied with the termination requirements under the contract; and

(4) Assurance of continued coverage of services, under certain conditions, consistent with the following:

(A) Every plan shall establish procedures governing termination of a participating provider who is terminated for reasons other than cause. The procedures shall include assurance of continued coverage of services, at the contract terms and price by a terminated provider for up to ninety (90) calendar days from the date of notice to the covered person for a covered person who:

(i) Has a degenerative and disabling condition or disease;

(ii) Has entered the third trimester of pregnancy. Additional coverage of services by the terminated provider shall continue through at lest six (6) weeks of postpartum evaluation; or

(iii) Is terminally ill.

(B) If a participating provider voluntarily chooses to discontinue participation as a network provider in a plan, the plan shall permit a covered person to continue an ongoing course of treatment with the disaffiliated provider during a transitional period:

(i) of up to ninety (90) days from the date of notice to the plan of the provider's disaffiliation from the plan's network, or

(ii) that includes delivery and postpartum care if the covered person has entered the third trimester of pregnancy at the time of the provider's disaffiliation.

(C) If a provider voluntarily chooses to discontinue participation as a network provider participating in a plan, such provider shall give at least a ninety-day notice of the disaffiliation to the plan. The plan shall immediately notify the disaffiliated provider's patients of that fact.

(D) Notwithstanding the provisions of paragraph 1 of this subsection, continuing care shall be authorized by the plan during the transitional period only if the disaffiliated provider agrees to:

(i) continue to accept reimbursement from the plan at the rates applicable prior to the start of the transitional period s payment in full,

(ii) adhere to the plan's quality assurance requirements and to provide to the plan necessary medical information related to such care, and

(iii) otherwise adhere to the plan's policies and procedures, including, but not limited to, policies and procedures regarding references, and obtaining preauthorization and treatment plan approval from the plan.

365:40-5-72. Continuation of benefits

(a) If group or individual contracts are terminated by the HMO, provision shall be made for continuation of benefits to enrollees who, on the date of termination, are confined in an inpatient facility until their discharge or expiration of benefits according to the group or individual contract, and provision shall be made for pregnant enrollees through delivery and discharge. An HMO is not required to continue further benefits for an enrollee or group terminated for cause.

(b) Each HMO shall have a plan for handling insolvency that allows for continuation of benefits for the duration of the contract period for which premiums have been paid, continuation of benefits for enrollees who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits, and continuation of benefits for pregnant enrollees through delivery and discharge. The Department shall require the plan to include one or more of the following:

(1) Insurance to cover the expenses to be paid for continued benefits after the HMO's insolvency;

(2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the HMO's insolvency for which premium payment has been made and until the enrollees' discharge from inpatient facilities;

(3) Insolvency reserves;

(4) Acceptable letters of credit; and

(5) Any other arrangements to assure that benefits are continued as specified above.

365:40-5-73. Disenrollment for cause

An HMO may disenroll an individual member of a group for cause such as failure to pay premiums or copayments, fraud, or misuse of identification card or if the enrollee's behavior is abusive, disruptive, threatening, or uncooperative to the extent that continued membership in the HMO seriously

impairs the HMO's ability to furnish services to either the enrollee or other enrollees. Before disenrolling the enrollee, the HMO shall:

(1) Make a serious effort to resolve the problem presented by the enrollee, including the use or attempted use of the HMO's grievance procedures;

(2) Ascertain that the enrollee's behavior does not directly result from an existing medical condition; and

(3) Document the problems, efforts, and medical conditions that demonstrate the HMO's conformity to this section.

365:40-5-74. Certification of creditable coverage

(a) For the purpose of this Section, "creditable coverage" shall have the same meaning as described in Section 2701(c) of the Federal Public Health Service Act.

(b) An HMO shall issue to individuals and members of a group a certificate of creditable coverage when individual or group coverage terminates. Said certificates shall be issued in accordance with the requirements and specifications of Sections 2701(c), (d), and (e) of the Federal Public Health Service Act.

PART 15. DISCONTINUATION OF HMO

365:40-5-80. Notice

An HMO shall give the Department at least one hundred eighty (180) days written notice of any decision to cease doing business. The HMO must submit for the Department's approval all notices, press releases, conversion agreements, memorandums of understanding, or other marketing or informational materials prior to their release and effective dates.

365:40-5-81. Individual market

(a) If an HMO elects to discontinue offering a particular contract form for health coverage offered in the individual market, coverage under such form shall be discontinued only if:

(1) The HMO provides notice to the Department and to each covered individual provided coverage under this contract form of such discontinuation at least ninety (90) days prior to the date of the discontinuation of such coverage;

(2) The HMO offers to each individual provided coverage under this contract form the option to purchase any other individual health coverage currently being offered by the HMO for individuals in such market in the state; and

(3) In exercising the option to discontinue coverage of this contract form and in offering the option of coverage under subparagraph (b)(2),1 the HMO acts uniformly without regard to any health-status-related factor of enrolled individuals or individuals who may become eligible for such coverage.

(b) If an HMO elects to discontinue offering all health coverage in the individual market in this state, health coverage shall be discontinued only if:

(1) The HMO provides notice to the Department and to each individual of such discontinuation at least one hundred eighty (180) days prior to the date of the expiration of such coverage; and

(2) All health coverage issued or delivered for issuance in the state in the individual market is discontinued and coverage under such health coverage in such market is not renewed.

365:40-5-82. Group market

(a) An HMO may discontinue offering a particular contract form of group health coverage offered in the small-group market or large-group market only if:

(1) The HMO provides notice to the Department and to each contractholder provided coverage under this form in such market, and to participants and beneficiaries covered under such coverage, of such discontinuation at least ninety (90) days prior to the date of the discontinuation of such coverage;

(2) The HMO offers to each contractholder provided coverage under this form in such market the option to purchase any other health coverage currently being offered by the HMO in such market; and

(3) In exercising the option to discontinue coverage of this form and in offering the option of coverage under subparagraph (a)(2) above, the HMO acts uniformly without regard to the claims experience of those contractholders or any health-status-related factor that relates to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage.

(b) In any case in which an HMO elects to discontinue offering all health coverage in the small-group market or the large-group market, or both, in this state, health coverage shall be discontinued only if:

(1) The HMO provides notice to the Department and to each contractholder, and participants and beneficiaries covered under such coverage, of such discontinuation at least one hundred eighty (180) days prior to the date of the discontinuation of such coverage; and

(2) All health coverage issued or delivered for issuance in this state in such markets is discontinued and coverage under such health coverage in such market is not renewed.

365:40-5-83. Market reentry

In the case of a discontinuation in the group or individual markets, the HMO may not provide for the issuance of any group or individual health coverage in this state during the 5-year period beginning on the date of the discontinuation of the last health coverage not renewed.

PART 17. CONFIDENTIALITY OF MEDICAL INFORMATION AND LIABILITY

365:40-5-90. Responsibility of HMO

(a) The HMO shall protect the confidentiality of its enrollees from public disclosure of confidential and medical information, however, this shall not be construed to prevent the Department or other legally constituted agencies of the State or Federal Government or peer review organizations from completing medical record reviews or obtaining information as required under applicable laws or rules.

(b) The HMO shall have access to treatment records and other information pertaining to the diagnosis, treatment or health status of any enrollee.

PART 19. REQUEST FOR ASSISTANCE AND PROMPT PAY FORMS

365:40-5-100. Request for assistance

(a) The Department shall expeditiously advise an HMO of each inquiry the Department receives regarding that HMO. Such inquiries need not be handled through the HMO's written grievance system.

(b) The Department shall provide a form that an enrollee may use to request assistance of the Department. The Department shall review such requests and consider whether or not the request for assistance raises issues of compliance with the HMO Act or the rules. If the Department has reason to believe that a violation exists, then the matter shall be considered by the Department and a determination shall be made by the Department as to the appropriate action to be taken.

(c) The Department shall not refer an inquiry or complaint to an HMO prior to investigating the matter if the Department has reason to believe that referring the inquiry or complaint may compromise the Department's ability to enforce the HMO Act or this Chapter.

365:40-5-101. Prompt Pay Form and requirements

The Prompt Pay Form as set forth in Appendix G of this Chapter shall be used in reporting violations of the prompt pay requirements. The person filing the form shall submit the original form to the Consumer Assistance and Claims Division of the Department and a copy to the entity accused of the prompt pay violation named in the form.

PART 21. GEOGRAPHIC SERVICE AREA VARIATIONS

365:40-5-110. Accessibility of providers

(a) The Department shall presume a proposed service area to be reasonable if the mean travel time is thirty (30) minutes or less from six equidistant points on the area boundary to the nearest primary and emergency care delivery sites within that area.

(b) The Department shall consider approving service areas with distances of greater than thirty (30) minutes to primary and emergency care providers, based on the following.

(1) Primary or emergency care providers are not available in the area;

(2) Primary or emergency care providers are available but do not meet the HMO's reasonable credentialing requirements;

(3) Primary or emergency care providers are unwilling or unable to enter a reasonable health services contract with the HMO; or

(4) Residents of the area customarily travel longer than 30 minutes to reach primary or emergency care providers.

365:40-5-111. Marketing and enrolling

(a) All marketing, enrollment, or informational materials produced by the HMO shall specify the approved geographic service area within which contracting providers are reasonably available and accessible.

(b) The Department recognizes that under some circumstances, persons who neither live nor work in the service area desire to enroll in an HMO. Those may include, but are not limited to, the following persons.

(1) Retirees;

(2) Persons living or working at or near the service area boundary, and whose neighbors are eligible for enrollment;

(3) Employees who have been relocated;

(4) Persons whose best or only health coverage option is an HMO, despite the additional travel time required;

(5) Persons who customarily choose to travel to the service area for their health services; or

(6) Family members living apart from one another, as a result of circumstances such as legal separation or divorce.

(c) The HMO must ensure that each subscriber living and working outside the service area, upon enrolling, signs a form showing understanding that his or her residence falls outside the service area and agreeing to seek all services, except emergency services as defined in the HMO contract, within the approved service area.

(d) Nothing in this section, or in the Department's approval of an HMO, shall be construed as authorization for the plan to enroll, solicit, or market to, any person who resides outside this state.

365:40-5-112. Geographic area filings

(a) Each HMO shall describe its proposed service area in terms of political boundaries, zip codes, or geographic boundaries.

(b) Each HMO shall provide to the Department a map of the complete service area clearly showing the service area boundaries, main traffic arteries, and any physical barriers such as mountains and rivers. The HMO shall show on the map the location of ambulatory and hospital providers. The HMO must mark six equidistant points along the boundary, and calculate mean travel time from those six points to the nearest primary and emergency services sites.

(c) The HMO shall provide the information required in this Section in its license application filed pursuant to 36 O.S. § 6903.

PART 23. REIMBURSEMENT OF CLAIMS

365:40-5-120. Purpose

The purpose of this Part is to ensure that claims for payment or reimbursement shall be processed timely and that settlements shall be paid in full and that prompt pay is received.

365:40-5-121. Requirement to reimburse claims for point of service

No HMO shall be required to reimburse claims for non-authorized out-of-network services other than emergency services unless the HMO offers a point of service option pursuant to Part 7 of this Subchapter.

365:40-5-122. Responsibilities

An HMO or its employees and agents shall not:

(1) Pay claims reviewers based on reductions, unless the reductions are based on uniformly applied protocols designed to detect billing errors and duplicate charges;

(2) Compel a subscriber or provider to:

(A) Accept less than the full settlement of a claim; or

(B) File suit to obtain full settlement; or

(3) Knowingly misrepresent reimbursement criteria or time limits to a subscriber, provider, or their representatives.

365:40-5-123. Reimbursement criteria

(a) An HMO that pays or reimburses claims shall disclose the criteria that establish how and whether a claim for services delivered by a participating or non-participating provider shall be paid. The disclosed criteria shall specify any documents required to be filed with a claim.

(b) If an HMO requires providers to use a uniform claim or billing form, the forms shall be either:

(1) The CMS-1500, or its successor, for outpatient billing and claim submission; or

(2) The UB-92, or its successor, for hospital billing and claim submission.

(c) An HMO shall furnish to providers the following information with the uniform claim or billing form:

(1) The amount the HMO shall pay the provider for the services rendered; and

(2) Notice that the provider shall bill the HMO directly for its portion of the charges if the subscriber has paid the applicable copayment or deductible.

(d) If an HMO requires the use of a claim transmittal form, the evidence of coverage shall include a convenient method for the subscriber to request the form. The form shall be sent to the subscriber within five (5) days after request.

(e) If an HMO uses reasonable and customary charge determinations to authorize settlements, it shall:

(1) Base such determinations on prevailing charges for health services and supplies common to a geographic area; and

(2) Furnish or arrange to furnish the rationale and data sources for a determination, within ten (10) days after receipt of a provider's request for this information and for no more than a nominal copying fee.

(f) A claim shall be reimbursed identically in amount whether a subscriber or provider submits the claim.

310:40-5-124. Claims payment report

(a) Upon the request of the Insurance Commissioner and in a time frame as specified by the Insurance Commissioner, HMOs shall file with the Department a periodic report on compliance with provisions in Titles 36 of the Oklahoma Statutes and this Part regarding reimbursement of claims within certain time periods.

(b) Each report shall be accompanied by a statement signed by a member of the Board of Directors or executive management attesting to the accuracy of the report.

(c) Any HMO that delegates any claim payment functions shall require the delegated entity or entities to prepare the required report for claims the entity processes including the required attestation.

(d) Each HMO shall collect and submit all required report(s) as a complete package.

(e) These reports shall be in such form and context as directed by the Department.

365:40-5-125. Elements of a clean claim

(a) **Required clean claim elements.** A provider submits a clean claim by providing the required data elements specified in O.A.C. 365:40-5-123 to an HMO along with any attachments and additional elements information of which the provider has been properly notified pursuant to O.A.C. 365:40-5-126.

(b) **Attachments.** The Center for Medicare and Medicaid Services has developed a variety of manuals that identify various attachments required of different providers for specific services. An HMO may use the appropriate Medicare standards for attachments in order to properly process claims for certain types of services. An HMO shall only require as attachments information that is either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the provider. Before any attachments may be required, the HMO shall satisfy the notification procedures set forth in O.A.C. 365:40-5-126.

(c) **Additional clean claim elements.** Before any additional clean claim elements may be required, the HMO shall satisfy the notification procedures set forth in O.A.C. 365:40-5-126. An HMO shall only require as additional clean claim elements information that is either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the provider.

365:40-5-126. Disclosure requirements

(a) An HMO shall not require an attachment or an additional element unless it has given the provider the disclosure mandated by this Section at least sixty (60) calendar days before

requiring the attachment or additional element as an element of the clean claim.

(b) An HMO shall not revise its requirements for data elements, attachments or additional elements unless it has given the provider the disclosure mandated by this Section at least sixty (60) calendar days before requiring the data element, attachment or additional element.

(c) The HMO shall not require claims filed during the sixty (60) day period after receipt of the disclosure to include the required attachment or additional element identified in the disclosure.

(d) Methods of disclosure may include one or more of the following:

(1) A written notice to all affected providers.

(2) Updated revisions to the provider manual or other document that sets forth the claims filing procedures; or

(3) Amendments to provider contracts that specify clean claim elements.

(e) If the provider contract requires mutual agreement of the parties as the sole mechanism for requiring attachments or additional elements, then the written notice specified in this Section shall not supersede the requirement for mutual agreement.

(f) All notices shall identify with specificity the attachment(s) or additional elements(s) required for a clean claim.

(g) The disclosure required by this Section shall be presumed received by the provider in the manner provided in O.A.C. 365:40-5-129.

365:40-5-127. Disclosure of processing procedures

(a) In contracts with providers, or in the provider manual or other document that sets forth the procedure for filing claims as required by O.A.C. 365:40-5-122, or by any other method mutually agreed upon by the contracting parties, an HMO shall disclose to its providers:

(1) The mailing address, including a physical address, where claims are to be sent for processing whether it be the address of the HMO, a delegated claims processor, or any other entity, including a clearing house or a repricing company designated by the HMO to receive claims;

(2) The telephone number to which providers' questions and concerns regarding claims may be directed; and

(3) The mailing address, including physical address, of any separate claims processing centers for specific types of services, if applicable.

(b) An HMO shall provide no less than sixty (60) calendar days prior written notice of any changes of address for submission of claims, and of any changes of delegation of claims payment functions, to all affected providers with whom the HMO has contracts. Except an HMO may provide less than sixty (60) days notice in situations beyond the control of the HMO.

(c) After a change of claims payment address or a change in delegation of claims payment functions, an HMO shall not premise the denial of a clean claim upon a provider's failure to file a clean claim within any contracted time period for claim filing, unless timely written notice has been given to the provider.

(d) If an HMO has delegated its claims processing functions to a third party, the delegation agreement must provide that the claims processing entity shall comply with the requirements of this Part and applicable law. Any delegation agreement or provision may not be construed to limit the HMO's authority or responsibility to comply with all applicable statutory and regulatory requirements.

365:40-5-128. Failure to promptly pay

(a) An HMO that fails to comply with the requirements in Titles 36 of the Oklahoma Statutes regarding reimbursement of claims and with this Part shall pay the greater of:

(1) The penalty amount for late payment referred to in applicable provisions in Title 36 of the Oklahoma Statutes; or

(2) The contracted penalty rate for late payment set forth in the contract between the provider and the HMO.

(b) Failure to pay the correct amount on a clean claim in accordance with the contract or denial of a clean claim for which payment should have been made that results in a failure to comply with the requirements of applicable provisions in Title 36 of the Oklahoma Statutes and this Part is considered a violation and may be subject to administrative penalties as set forth in HMO Act.

(c) Any amount previously paid or any charge for a non-covered service shall be deducted from the payment.

365:40-5-129. Date of claim receipt

(a) A provider and an HMO may agree by contract to establish a procedure to create a rebuttable presumption regarding the date of claim receipt.

(b) If a provider and HMO do not by contract agree to a method for the establishment of a rebuttable presumption, then the procedures set forth in subsections (c) through (e) of this Section shall be used to establish a rebuttable presumption to demonstrate the date of claim receipt.

(c) The provider shall maintain a claims summary report to identify each claim and identify the batch to which multiple claims were a part. The claims summary report shall be used as a means of confirming the number of claims submitted.

(d) The summary report shall accompany each batched filing, except for electronic submissions.

(e) The provider shall submit a claim or a multiple claim batch by one of the following methods, as appropriate:

(1) United States mail first class. Claim(s) submitted by United States mail first class will be considered received on the seventh business day after the date the claim(s) was placed in the mail;

(2) Certified mail. Claim(s) submitted by certified mail will be considered received on the date the delivery receipt is signed;

(3) Overnight delivery. Claim(s) submitted by overnight delivery will be considered received on the date the delivery receipt is signed;

(4) Electronically. Claim(s) submitted electronically will be considered received on the date of verification of receipt by the HMO or the HMO's clearinghouse. Claims are to be accompanied by any system-generated proof of

transmission. If the HMO or its clearinghouse do not confirm receipt or reject the transmission within 24 hours of submission, the provider or the provider's clearinghouse shall provide the confirmation date conditional upon the provider or the provider's clearinghouse verifying the claim(s) contained the correct payor identification;

(5) Facsimile. Claim(s) submitted by facsimile will be considered received on the date of the facsimile confirmation, or if the transmission occurs after the HMO's working hours, on the HMO's next working day; or

(6) Hand delivery. Claim(s) submitted by hand delivery will be considered received on the date the delivery receipt is signed.

365:40-5-130. Terms of contracts

Contracts between HMOs and providers shall not include terms that:

(1) Exceed the maximum number of days established for reimbursement of claims pursuant to applicable provisions in Title 36 of the Oklahoma Statutes;

(2) Requires the provider to contact the HMO to inquire about the status of a claim; or

(3) Waive the provider's right to recover reasonable attorney fees, if such provider is the prevailing party in litigation, pursuant to applicable provisions in Title 36 of the Oklahoma Statutes.

APPENDIX A. HMO FORM A [NEW]

OKLAHOMA INSURANCE DEPARTMENT
HOLDING COMPANY SYSTEM ACQUISITION STATEMENT

HMO FORM A

STATEMENT REGARDING THE
ACQUISITION OF CONTROL OF OR MERGER WITH A
HEALTH MAINTENANCE ORGANIZATION (HMO)

_____
Name of HMO
by
_____
Name of Acquiring Person (Applicant)

FILED WITH

THE INSURANCE COMMISSIONER
FOR THE STATE OF OKLAHOMA

Dated: _____, 20_____

Name, Title, Address and Telephone Number of Individual to Whom Notices and correspondence Concerning This Statement Should Be Addressed:

_____
_____
_____
_____

ITEM 1. **HMO and Method of Acquisition**
State the name and address of the HMO to which this application relates and a brief description of how control is to be acquired.

ITEM 2. **Identity and Background of the Applicant**
(a) State the name and address of the applicant seeking to acquire control over the HMO.
(b) If the applicant is not an individual, state the nature of its business operation for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. State whether or not the applicant has ever been convicted of any felony or of a misdemeanor involving moral turpitude, dishonesty, or breach of trust, during its existence, and any administrative discipline imposed on the applicant during the past ten (10) years and, if so, give the date, nature of conviction or administrative

order, name and location of court or administrative agency or board, and penalty imposed or other disposition of the case. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.
(c) Furnish a chart or listing clearly presenting the identities of the inter-relationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than 1/2 of 1% of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained, other than by the ownership or control of voting securities, indicate the basis for such control. As to each person specified in such chart or listing, indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings looking toward a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

ITEM 3. **Identity and Background of Individuals Associated with the Applicant**
State the following with respect to (1) the applicant if (s)he is an individual or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual:
(a) Name and business address;
(b) Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;
(c) Material occupations, positions, offices or employments during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith;
(d) Whether or not such person has ever been convicted of any felony or of a misdemeanor involving moral turpitude, dishonesty, or breach of trust, during his or her lifetime, and if so, the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.
(e) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) or any administrative discipline during the last ten years and, if so, give the date, nature of conviction or administrative order, name and location of court or administrative agency or board, and penalty imposed or other disposition of the case.

ITEM 4. **Nature, source and amount of consideration**
(a) Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise

obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.
(b) Explain the criteria used in determining the nature and amount of such consideration.
(c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity to remain confidential, he must specifically request that the identity be kept confidential.

ITEM 5. **Future plans for HMO**
Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate such HMO, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

ITEM 6. **Voting securities to be acquired**
State the number of shares of the HMO's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

ITEM 7. **Ownership of voting securities**
State the amount of each class of any voting security of the HMO which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.

ITEM 8. **Contracts, arrangements or understandings with respect to voting securities of the HMO**
Give a full description of any contracts, arrangements or understandings with respect to any voting security of the HMO in which the applicant, its affiliates or any person listed in Item 3 is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

ITEM 9. **Recent purchases of voting securities**
Describe any purchases of any voting securities of the HMO by the applicant, its affiliates or any person listed in Item 3 in the 12 calendar months preceding the filing of this Statement. Include in such description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefore. State whether any such shares so purchased are hypothecated.

ITEM 10. **Recent recommendations to purchase**
Describe any recommendations to purchase any voting security of the HMO made by the

applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this Statement.

ITEM 11. **Agreements with broker-dealers**
Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the HMO for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. **Financial statements and exhibits**
(a) Financial statements and exhibits shall be attached to this Statement as an appendix, but list under this item the financial statements and exhibits so attached.
(b) The financial statements shall include the annual financial statements of the persons identified in Item 2 for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if such information is available. Such statements may be prepared on either an individual basis, or, unless the Commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business. The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an HMO which is actively engaged in the business, the financial statements need not be certified, provided they are based on the Annual Statement of such person filed with the regulatory department of the person's domiciliary State and are in accordance with the requirements of the NAIC Accounting Practices and Procedures Manual or other accounting principles prescribed or permitted under the law and regulations of such state.
(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the HMO and (if distributed) of additional soliciting material relating thereto; any proposed employment, consultation, advisory or management contracts concerning the HMO; annual reports to the stockholders of the HMO and the applicant for the last two fiscal years; and any additional documents or papers required by HMO Form A or regulation Section 365:25-7-6.

ITEM 13. **Signature and certification**
Signature and certification required as follows:

SIGNATURE
Pursuant to the requirements of Section 1653 of the Holding Company Act and Section 6930 of the HMO Act, _____ has caused this application to be duly signed on its behalf, in the City of _____ and State of _____ on the ____day of _____, 20____.

(SEAL)

_____
Name of Applicant
BY: _____
(Name)

_____
(Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, 20____, for and on behalf of _____; and that (s)he is the
(Name of Applicant)

_____ of such company and that (s)he is authorized
(Title of Officer)
to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

_____
(Type or print name beneath)

_____

Sworn to and subscribed before me this ___ day of ____, 20___ by
_____

_____
Notary Public

My Commission Expires:

_____
(SEAL)

APPENDIX B. HMO FORM B [NEW]

OKLAHOMA INSURANCE DEPARTMENT
HOLDING COMPANY SYSTEM REGISTRATION STATEMENT

HMO FORM B

OKLAHOMA HOLDING COMPANY SYSTEM
ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Commissioner for
the State of Oklahoma.

BY

_____
Name of Registrant

On Behalf of the Following Health Maintenance Organizations (HMO)

Name(s) Address(es)

_____
_____
_____
_____
_____
_____

Date: _____, 20_____

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

_____
_____
_____
_____
_____

ITEM 1. **Identity and control of registrant**

Furnish the exact name of each HMO registering or being registered (hereinafter called "the Registrant"), the home office address and principal executive offices of each; the date on which each Registrant became part of the holding company system; and the method(s) by which control of each Registrant was acquired and is maintained.

ITEM 2. **Organizational chart**

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the holding company system. No affiliate need be shown if its total assets are equal to less than 1/2 of 1% of the total assets of the ultimate controlling person within the holding company system unless it has assets valued at or exceeding $250,000. The chart or listing should show the percentage of each class of voting securities of each affiliate, which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. **The ultimate controlling person**

As to the ultimate controlling person in the holding company system furnish the following information:

(a) Name.

(b) Home office address.

(c) Principal executive office address.

(d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.

(e) The principal business of the person.

(f) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned.

(g) If court proceedings looking toward a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.

ITEM 4. **Biographical information.**

Furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

ITEM 5. **Transactions, relationships and agreements**

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the Registrant and its affiliates:

(a) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;

(b) purchases, sales or exchanges of assets;

(c) transactions not in the ordinary course of business;

(d) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant's assets to liability, other than contracts entered into in the ordinary course of the Registrant's business;

(e) all management agreements, service contracts and all cost-sharing arrangements;
(f) reinsurance agreements;
(g) dividends and other distributions to shareholders;
(h) consolidated tax allocation agreements; and
(i) any pledge of the Registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the holding company system.

No information need be disclosed if such information is not material for purposes of O.A.C. 365:40-3-12. Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of 1% or less of the Registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material. The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include at least the following: the nature and purpose of the transaction; the nature and amount of any payments or transfers of assets between the parties; the identity of all parties to such transaction; and the relationship of the affiliated parties to the Registrant.

ITEM 6. **Litigation or administrative proceedings**

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

(a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
(b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

ITEM 7. **Statement regarding plan or series of transactions**

The HMO shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. **Financial statements and exhibits**

(a) Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
(b) The financial statements shall include the annual financial statements of the ultimate controlling person in the holding company system as of the end of the person's latest fiscal year. If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the

extent such information is available. Such financial statements may be prepared on either an individual basis, or unless the Commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business. Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of the NAIC Accounting Practices and Procedures Manual or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an HMO which is actively engaged in the business, the annual financial statements need not be certified, provided they are based on the Annual Statement of such HMO filed with the regulatory department of the HMO's domiciliary State and are in accordance with requirements of the NAIC Accounting Practices and Procedures Manual or other accounting principles prescribed or permitted under the law and regulations of such state.
(c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by HMO Form B or O.A.C. 365:40-3-15.

ITEM 9. **Information in the Application for Certificate of Authority**
Amendments or modifications to the items required by O.A.C. 365:40-3-14 must be filed with HMO Form B.

ITEM 10. **Form C required**
An HMO Form C, Summary of Registration Statement, must be prepared and filed with this HMO Form B.

ITEM 11. **Signature and certification**
Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of O.A.C. 365:40-3-12, the Registrant has caused this annual registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of _____, 20____.

(SEAL)

_____
Name of Registrant
BY _____
(Name)
_____
(Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated _____,20____, for and on behalf of _____; that (s)he is the_____
(Name of Company) (Title of Officer)
of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

_____
(Signature)

_____
(Type or print name beneath)

APPENDIX C. HMO FORM C [NEW]

SUMMARY OF REGISTRATION STATEMENT

HMO FORM C

OKLAHOMA HOLDING COMPANY
SUMMARY OF REGISTRATION STATEMENT

Filed with the Insurance Commissioner for
the State of Oklahoma.
BY_____

Name of Registrant
On Behalf of the Following Health Maintenance Organizations (HMO)

Name(s) Address(es)

_____
_____
_____
_____
_____
_____

Date: _____, 20___
Name, Title, Address and Telephone Number of Individual to
Whom Notices and Correspondence Concerning This Statement
Should Be Addressed:

_____
_____
_____
_____
_____

Furnish a brief description of all items in the current annual registration statement, which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of HMO Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of 10 percent of more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of HMO Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The HMO shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of O.A.C. 365:40-3-12, the Registrant has caused this summary of registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of _____, 20____.

(SEAL)

_____

Name of Registrant

BY _____

(Name)

_____

(Title)

Attest:

_____

(Signature of Officer)

_____

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached summary of registration statement dated _____, 20____, for and on behalf of _____; that (s)he is the_____ of such

(Name of Company) (Title of Officer)

company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

_____

(Type or print name beneath)

_____

APPENDIX D. HMO FORM D [NEW]

PRIOR NOTICE OF A TRANSACTION

HMO FORM D

OKLAHOMA HOLDING COMPANY
PRIOR NOTICE OF A TRANSACTION

Filed with the Insurance Commissioner for
the State of Oklahoma.
BY_____

Name of Registrant
On Behalf of the Following Health Maintenance Organizations (HMO)
Name(s) and Address(es)

_____
_____
_____
_____
_____
_____

Date: _____, 20___
Name, Title, Address and Telephone Number of Individual to
Whom Notices and Correspondence Concerning This Statement
Should Be Addressed:

_____
_____
_____
_____
_____

ITEM 1. Identity of parties to transaction

Furnish the following information for each of the parties to the transaction:

(a) Name.
(b) Home office address.
(c) Principal executive office address.
(d) The organizational structure, i.e. corporation, partnership, individual, trust, etc.
(e) A description of the nature of the parties' business operations.
(f) Relationship, if any, of other parties to the transaction to the HMO filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the HMO seeking approval, or by the HMO filing the notice in the affiliated parties.
(g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s), which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. Description of the transaction

Furnish the following information for each transaction for which notice is being given:
(a) A statement as to whether notice is being given under O.A.C. 365:40-3-14(b).
(b) A statement of the nature of the transaction.
(c) The proposed effective date of the transaction.

ITEM 3. Sales, purchases, exchanges, loans, extensions of credit, guarantees or investments

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the HMO filing notice, by any party to the transaction, or by any affiliate of the HMO filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount, which the HMO will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest. If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the HMO's surplus. No notice need be given if the maximum amount which can at any time be outstanding or for which the HMO can be legally obligated under the loan, extension of credit or guarantee is less than, as of the 31st day of December next preceding, the lesser of 3% of the HMO's admitted assets or 25% of surplus as regards policyholders.

ITEM 4. Loans or extensions of credit to a non-affiliate

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the HMO making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of duns, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the HMO's surplus. No notice need be given if the loan or extension of credit is one which equals less than the lesser of 3% of the HMO's admitted assets or 25% of capital and surplus.

ITEM 5. Reinsurance

If the transaction is a reinsurance agreement or modification thereto, as described by O.A.C. 365:40-3-13(b)(3)(B), furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the HMO and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the HMO's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the HMO's surplus. No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the HMO's liabilities in connection with the reinsurance agreement or modification thereto is less than 5% of the HMO's capital and surplus as of the 31st day of December next preceding.

ITEM 6. Management agreements, service agreements and cost-sharing arrangements

For management and service agreements, furnish:

(a) a brief description of the managerial responsibilities, or services to be performed.

(b) a brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

(a) a brief description of the purpose of the agreement.

(b) a description of the period of time during which the agreement is to be in effect.

(c) a brief description of each party's expenses or costs covered by the agreement.

(d) a brief description of the accounting basis to be used in calculating each party's costs under the agreement.

ITEM 7. Information in the Application for Certificate of Authority

Subsequent to receiving its certificate of authority, the HMO must submit the information, modifications or amendments to the items 4-6 and 11 described in subsection C of Section 6903 of the Title 36 to the Insurance Commissioner for approval prior to the effectuation of the modification or amendment.

ITEM 8. Powers that may affect the financial soundness of an HMO

An HMO shall file notice, with adequate supporting information with the Insurance Commissioner prior to the exercise of any power granted in paragraphs 1, 2 or 4 of subsection A of Section 6905 of Title 36 that may affect the financial soundness of the HMO. No information need to be disclosed on the registration statement filed, if such information is not material for the purposes of this section. Unless the Commissioner by rule, regulation or order provides otherwise, sales purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent (1/2 of 1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

ITEM 9. Signature and certification

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of O.A.C. 365:40-3-13,
_____ has caused this notice to be duly signed on its behalf
in the City of _____ and State of _____
on the ____ day of _____, 20____.

(SEAL)_____
Name of Applicant
BY _____
(Name)
_____
(Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached notice dated
_____, 20____, for and on behalf of _____;
(Name of Applicant)
that (s)he is the _____ of such company and that (s)he is authorized to
(Title of Officer)
execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

_____
(Signature)

_____
(Type or print name beneath)

APPENDIX E. HMO FORM E [NEW]

PRE-NOTIFICATION FORM
REGARDING THE POTENTIAL COMPETITIVE IMPACT
OF A PROPOSED MERGER OR ACQUISITION BY A
NON-DOMICILIARY HMO DOING BUSINESS IN THIS
STATE OR BY A DOMESTIC HMO

_____
Name of Applicant

_____
Name of Other Person
Involved in Merger or
Acquisition

Filed with the Insurance Department of

_____

Dated: _____, 20_____.

Name, title, address and telephone number of person completing this statement:

_____
_____
_____
_____

ITEM 1. NAME AND ADDRESS
State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.

ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES
State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.

ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION
State the nature and purpose of the proposed merger or acquisition.

ITEM 4. NATURE OF BUSINESS
State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.

ITEM 5. MARKET AND MARKET SHARE
State specifically what market and market share in each relevant HMO market and persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past

five years and identify the source of such data. For purposes of this question, market means direct written premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

NOTE: State Insurance Departments may additionally choose to make these calculations using their own data or data provided by the NAIC.

APPENDIX F. HMO FORM R [NEW]

OKLAHOMA INSURANCE DEPARTMENT
REDOMESTICATION APPLICATION

HMO FORM R

Statement Regarding The Redomestication Of

_____
Name of HMO

FILED WITH

THE INSURANCE COMMISSIONER
FOR THE STATE OF OKLAHOMA

Dated:_____, 20_____

Name, Title Address and Telephone Number of
Individual to Whom Notices and Correspondence
Concerning This Statement Should Be Addressed:

_____
_____
_____
_____

ITEM 1. **Identity and background of the applicant.**
(A) State the name and address of the applicant seeking to redomesticate.
(B) State the nature of applicant's business operations for the past five years or for such lesser period as such applicant and any predecessors thereof shall have been in existence.
(C) Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than 1/2 of 1% of the total assets of the ultimate controlling person affiliated with the applicant. Also indicate in such chart or listing the following information:

(i) The percentage of ownership of each such person, which is owned or controlled by the applicant or by any other such person.
(ii) If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control.
(iii) As to each person specified in such chart or listing, indicate the type of organization (e.g. corporation, trust, partnership);

(I) Describe the business it transacts; and
(II) List the state or other jurisdiction of domicile.

(iv) If court proceedings looking toward a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

ITEM 2. **Identity and background of individuals associated with the applicant.**

Provide the following with respect to each director and officer of the applicant; each director and officer of applicant's control person or persons; and each owner of 10% or more of the voting securities of the applicant and applicant's control person or persons:

(A) Name and business address;

(B) Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;

(C) Material occupations, positions, offices or employments during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal government agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith;

(D) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

(E) Any other information as the Commissioner may deem necessary.

ITEM 3. **Future plans of HMO.**

(A) Describe any plans or proposals, which the applicant may have, to declare an extraordinary dividend, to liquidate such HMO, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

(B) Provide a three year plan of operation which shall include but not be limited to marketing strategies by state, premium projections by state, information concerning proposed home or regional office locations and employment impact in Oklahoma.

ITEM 4. **Regulatory history.**

(A) If any entities listed in Item 1(C) of this Form are required to be licensed by or registered with any federal, state or municipal governmental agency indicate such fact, and indicate the current status of such licensure or registration, and provide an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith having occurred during the preceding 5 years or which is currently pending.

(B) If the applicant is required to be licensed by or registered with any federal, state or municipal governmental agency indicate such fact, and indicate the current status of such licensure or registration, and provide an explanation of any surrender, revocation,

suspension or disciplinary proceedings in connection therewith having occurred during the preceding 5 years or which is currently pending.

ITEM 5. **Examination status.**

Indicate the following:

(A) Whether the applicant's domiciliary state, or any other state or jurisdiction in which the applicant is transacting the business of a health maintenance organization, is currently examining the applicant.

(B) Whether the applicant's domiciliary state, or any other state or jurisdiction in which the applicant is transacting the business of a health maintenance organization has provided notice of intent to examine and if so provide an explanation regarding such proposed examination.

(C) Provide detail as to the nature and type of examination listed in (A) and (B) of this paragraph.

ITEM 6. **Rates and reserves.**

Indicate the methodologies utilized by the applicant in establishing its rates and reserves. Also, provide the names, addresses, and professional qualifications of the individuals responsible for these functions. Specify if the individuals are outside consultants or employees of the applicant.

ITEM 7. **Financial statements and other exhibits.**

(A) Financial statements and exhibits shall be attached to this Statement as an appendix, but list under this item the financial statements and exhibits so attached.

(B) The financial statements shall include the following:

(1) Annual and quarterly financial statements of the applicant for the preceding five years.

(2) Annual financial statements of the person or persons who control the applicant pursuant to 36 O.S. § 1651(C) for the preceding three fiscal years (or for such lesser period as such person or persons and any predecessors thereof shall have been in existence), and similar information as of a date not earlier than ninety (90) days prior to the filing of the statement. Such financial statements need not be audited; except an audit may be required if the Commissioner determines an audit is necessary.

(C) File as exhibits copies of all proposed tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the HMO or of any ultimate controlling party or parties and (if distributed) of additional soliciting material relating thereto:

(i) any proposed employment consultation, advisory or management contracts concerning the HMO;

(ii) annual reports to the stockholders of the HMO and the ultimate controlling party or parties for the last two fiscal years; and

(iii) any additional documents requested by the Commissioner.

(D) File as exhibits all examination reports, whether financial, organizational, market conduct or otherwise, issued within the past five (5) years by the applicant's domiciliary

state, or any other state or jurisdiction in which the applicant transacts the business of a health maintenance organization.
(E) File as exhibits copies of any documents relating to any final orders or agreements entered into between the applicant or its affiliate and any regulatory body as disclosed in (4) of this section.
(F) And any other information as the Commissioner may deem necessary.

ITEM 8. **Signature and certification**
Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of O.A.C. 365:40-3-16, _____ has caused this application to be duly signed on its behalf, in the City of _____ and State of _____ on the ____day of _____, 20____.

(SEAL)

_____
Name of Applicant
BY: _____
(Name)
_____
(Title)

Attest:
_____
(Signature of Officer)
_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, 20____, for and on behalf of
_____; and that (s)he is the
(Name of Applicant)

_____ of such company and that (s)he is authorized
(Title of Officer)
to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.
(Signature) _____
(Type or print name beneath) _____

Sworn to and subscribed before me this ___ day of _____, 20___ by _____.

_____
Notary Public

My Commission Expires:

_____
(SEAL)

APPENDIX G. PROMPT PAY FORM [NEW]

PROMPT PAY FORM

Oklahoma Insurance Department
P.O. Box 53408
2401 N.W. 23rd Suite 28 (73107)
Oklahoma City, OK 73152-3408
(405) 521-2991
(800) 522-0071 Toll Free (In State Only)
(405) 521-6652 Fax

NOTE:
ENTITIES ACCUSED OF PROMPT PAY VIOLATIONS ARE REQUIRED TO SUBMIT DOCUMENTATION SUPPORTING THE REASON FOR DELAY IN PAYMENT OR PROOF OF PAYMENT TO THE OKLAHOMA INSURANCE DEPARTMENT WITHIN TEN (10) DAYS.

FROM: _____ Telephone: _____

Address: _____ City & State: _____ Zip: _____

Name of insured or member: _____ Telephone: _____

Address: _____ City & State: _____ Zip: _____

Full Name of Entity accused of prompt pay violations: _____

Address: _____ City & State: _____ Zip: _____

Policy/Contract/Group Number or Name: _____

Dates Claims Originally Submitted: _____

Please give as detailed information as possible including dates and explain what solution you feel is correct. Attach copies of all correspondence relating to the inquiry. Include the following information if available: 1) Provider PIN such as health plan/company ID/tax ID; 2) Member ID number; 3) Date of original claim filing; 4) Date of service; 5) Billed amount for the service; and 4) description of the service or CPT code involved.

_____

_____

_____

_____

(Continue on the back)

COMPLAINANT MUST PROVIDE A COPY OF THIS COMPLETED FORM TO THE ENTITY ACCUSED OF PROMPT PAY VIOLATIONS AND THE OKLAHOMA INSURANCE DEPARTMENT SIMULTANEOUSLY.

FOR INSURANCE DEPARTMENT USE ONLY

Complaint Number_____ Claim Analyst____	Date Entered_____
Complainant type_____ Complainant letter _____	Coverage _____ 1._____ 2._____ 3._____
Entity number 1._____ 2._____ 3._____	Reason for complaint 1._____ 2._____ 3._____
Entity type 1._____ 2._____ 3._____	Dispositions 1._____ 2._____ 3._____
Entity function 1._____ 2._____ 3._____	Inquirer _____ (If not same as shown above)

[OAR Docket #04-867; filed 5-7-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 1. ADMINISTRATION

[OAR Docket #04-868]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Procedure in Individual Administrative Proceedings
450:1-5-14. [AMENDED]
450:1-5-15. [REVOKED]
Subchapter 9. Certification and Designation of Facilities and Services
450:1-9-7. [AMENDED]
450:1-9-12. [AMENDED]
AUTHORITY:
Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415.
DATES:
Comment period:
January 15, 2004 through February 19, 2004
Public hearing:
February 19, 2004
Adoption:
March 12, 2004
Submitted to Governor:
March 16, 2004
Submitted to House:
March 16, 2004
Submitted to Senate:
March 16, 2004
Gubernatorial approval:
April 26, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 7, 2004.
Final adoption:
May 7, 2004
Effective:
July 1, 2004
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act, the proposed rule revisions to Chapter 1 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, enhance service provision and supervision, 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, 2004:

SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL ADMINISTRATIVE PROCEEDINGS

450:1-5-14. Proposed Order

(a) **Issuance and services of final order.** Not more than twenty (20) calendar days after conclusion of the hearing, the Commissioner or the Hearing Officer shall issue a proposed order with findings of fact and conclusions of law. If ODMHSAS proves its allegations in the petition and notice by clear and convincing evidence, the Commissioner or the Hearing Officer shall issue an order sustaining the allegations. If ODMHSAS does not meet its burden, the Commissioner or Hearing Officer shall issue an order in favor of the respondent(s). The Hearing Clerk shall file and serve the proposed order on ODMHSAS and respondent(s) by certified mail, return receipt requested.
(b) **Appeal.** A party may appeal a Final Order as provided in the APA.

450:1-5-15. Hearing before the Board and Final Order [REVOKED]

~~(a) **Request for hearing.** The proposed order shall become final unless a party files and serves a written request for a hearing by the Board with the Hearing Clerk within fifteen (15) calendar days of the filing of the proposed order.~~
~~(b) **Briefs and exceptions.** In the event a hearing by the Board is requested, all parties will be given the opportunity to file briefs and exceptions to the proposed order.~~
~~(c) **Hearing.** When a request for a hearing is filed, the matter will be set on the agenda of the next Board meeting, unless the request is filed fifteen (15) calendar days or less prior to the next scheduled Board meeting, in which case it will be set on the agenda of the following meeting. At the Board meeting, the parties shall be permitted to present their briefs and oral argument; the length of oral argument shall be determined by the chair of the Board. Upon conclusion of oral argument by the parties, the Board may convene in executive session to deliberate the matter.~~
~~(d) **Issuance and service of final order.** Within thirty (30) calendar days after the hearing before the Board, the Board shall issue a Final Order stating the findings of fact made and the conclusions of law reached, and specifying the action to be taken. The Hearing Clerk shall file the Final Order and serve it on the parties; the respondent(s) shall be served by certified mail, return receipt requested.~~
~~(e) **Appeal.** A party may appeal a Final Order as provided in the APA.~~

SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITIES AND SERVICES

450:1-9-7. Procedures for completion of certification process

(a) **Certification process.** Completion of the certification process will be done in cooperation between the applicant and ODMHSAS staff, and consists of:
(1) a review by ODMHSAS of all application materials;
(2) an on-site review of the facility and completion of the applicable site visit protocol by ODMHSAS;

(3) a review of all records deemed applicable by the ODMHSAS;

(4) development and dissemination of report materials by ODMHSAS;

(5) development and review of any needed plans of correction;

(6) applicable follow-up on-site reviews; and

(7) presentation by ODMHSAS staff of the review results and associated recommendations to the Board.

(b) **Initial applications.** All initial applications for certification shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled. If the applicant is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules, based on the initial on-site review findings, a plan of correction will not be requested and a notice of denial of the certification application shall be sent to the applicant by the Commissioner.

(c) **Length of certification process.** If an applicant for initial certification fails to achieve full certification within six (6) months of being granted temporary certification, the applicant shall not receive full certification and a recommendation of non-renewal or revocation of the existing certification will be made to the Board. In such case, the applicant may reapply by filing a new application for certification form, and submitting the required documentation and fee to ODMHSAS.

(d) **Renewal applications.**

(1) ODMHSAS will, prior to the renewal date, notify facilities the application for renewal of certification is due.

(2) The facility shall submit its application for renewal before the expiration of its certification.

(3) Renewal applications for certification shall be reviewed for completeness by ODMHSAS staff. If the facility is cited for deficiencies on 50% or more of the applicable standards and rules based on the site review findings, a plan of correction will not be requested and non-renewal will be recommended to the Board.

(4) If, after being granted conditional certification, an applicant for renewal fails to achieve full certification within four (4) months, the applicant shall not receive full certification and a recommendation of non-renewal of the conditional certification will be made to the Board.

(e) **Site reviews.**

(1) Initial, renewal or follow-up site reviews, based on the current certification status of the applicant, will be scheduled and conducted by designated representatives of the ODMHSAS at each location or site of the applicant.

(2) Only one follow-up site review will be conducted on facilities receiving Conditional or Temporary Certification for the purpose of determining compliance with standards and the plan of correction. For a facility granted Temporary Certification, the site review will be conducted on standards not applicable during the initial certification visit, and a minimum of five (5) records shall be made available for review.

(3) A Site Review Protocol shall be completed during each site visit. Protocols shall contain the current ODMHSAS Standards and Criteria applicable to the facility.

(A) A facility must be prepared to provide evidence of compliance with each applicable standard.

(B) In the event the reviewer(s) identifies some aspect of facility operation that adversely affects client safety or health, the reviewer(s) shall notify the facility director and appropriate ODMHSAS staff. An immediate suspension of certification may be made by the Commissioner of ODMHSAS.

(f) **Accreditation status.** The ODMHSAS may accept accreditation granted by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF) or the American Osteopathic Association (AOA) as compliance with certain specific ODMHSAS standards as identified in the site review protocol. For such to be considered, the facility shall make application and submit evidence to the ODMHSAS of current accreditation status. This evidence shall include documentation of the program or programs included in the most recent accreditation survey, including reports of unannounced visits by the accrediting organization or subsequent actions initiated by the accrediting organization that may affect the accreditation status of the facility, the report of the survey and any corresponding plans of correction, and the dates for which the accreditation has been granted.

(g) **Deficiencies.** For each standard and rule not met by the facility a deficiency shall be cited.

(h) **Report to applicant and plan of correction.**

(1) During the course of the certification process, and prior to determination of certification status, ODMHSAS staff shall report the results of the on-site review to the facility. The facility shall receive written notice of the deficiencies in a Certification Report.

(2) The facility must submit a written plan of correction for each deficiency for approval within two (2) weeks of the receipt of the Certification Report. Approval of the plan of correction shall be required before the completed application for certification will be presented to the Board. However, if the facility is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules based on the initial site review findings, a plan of correction will not be requested.

(i) **Notification of Departmental recommendation for certification.**

(1) After completion of the on-site review and report on the Application for Certification, ODMHSAS staff shall prepare a recommendation on the certification status or application for the Board.

(2) Prior to the ODMHSAS staff's presentation of its recommendation of an applicant's certification to the Board, the ODMHSAS staff shall notify the applicant of:

(A) the recommendation, and

(B) the date and time of the Board meeting at which the facility's application, and the recommended certification will be presented; and

(C) the requirement of a facility receiving a recommendation of denial, non-renewal, conditional or temporary to have a representative present.

(j) **Actions on certification applications.** ODMHSAS staff shall make one of the following recommendations to the Board:

(1) Certification with commendation;
(2) Certification;
(3) Conditional certification;
(4) Temporary certification;
(5) Denial of initial certification; or
(6) Non-renewal of certification.

(k) If the Board approves a recommendation to deny an initial certification application, ODMHSAS shall send the applicant a notice of denial. If the Board approves a recommendation to not renew certification, an individual proceeding shall be initiated pursuant to Subchapter 5 to deny the renewal.

450:1-9-12. Reapplication following denial, suspension or revocation of certification

Reapplication for consideration of certification for any program for which certification has been suspended, revoked or not renewed will not be accepted or considered unless at least six (6) months has passed since ~~the~~ issuance of a Final Order of suspension, revocation or non-renewal.

[OAR Docket #04-868; filed 5-7-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 15. CONSUMER RIGHTS

[OAR Docket #04-869]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:15-1-1. [AMENDED]
450:15-1-2. [AMENDED]
Subchapter 3. Consumer Rights
Part 1. ~~Inpatient~~ Mental Health and Drug or Alcohol Abuse Services Consumer Bill of Rights
450:15-3-1. [AMENDED]
450:15-3-2. [AMENDED]
450:15-3-3. [AMENDED]
450:15-3-4. [REVOKED]
450:15-3-5. [REVOKED]
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450:15-3-25. [AMENDED]
450:15-3-27. [AMENDED]
450:15-3-28. [NEW]
Part 3. ~~Inpatient Mental Health~~Consumer Grievance Procedure
450:15-3-45. [AMENDED]
Part 7. Consumer Access to Health Information, Facilities Operated by ODMHSAS
Part 9. Client Rights, Domestic Violence, Batterer's Intervention Sexual Assault Programs and Shelters [NEW]
450:15-3-70. [NEW]
450:15-3-71. [NEW]
450:15-3-72. [NEW]
450:15-3-73. [NEW]
Part 11. Resident Rights, Mental Health Residential Care Facilities [NEW]
450:15-3-80. [NEW]
450:15-3-81. [NEW]
450:15-3-82. [NEW]
450:15-3-83. [NEW]
450:15-3-84. [NEW]
450:15-3-85. [NEW]
Subchapter 9. Consumer Rights, Non-Inpatient Services
450:15-9-1. [REVOKED]
450:15-9-2. [REVOKED]
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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 15 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, enhance advocacy services for individuals receiving services by organizations operated or certified by or under contract with ODMHSAS, 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, 2004:

450:15-1-1. Purpose

This Chapter implements 43A O.S. §§ 2-108, 2-109 and addresses the rights of individuals receiving services, either voluntarily or involuntarily from facilities operated by, certified by or under contract with, the Department of Mental Health and Substance Abuse Services ~~(ODMHSAS)~~, and outlines the rules governing the operation of the ODMHSAS Office of Consumer Advocacy, including investigations of alleged consumer rights violations conducted by that Office.

450:15-1-2. Definition

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 consumer by staff responsible for the consumer's health, safety, or welfare, including but not limited to:

(A) non-accidental physical injury or mental anguish;

(B) sexual abuse;

(C) sexual exploitation;

(D) use of mechanical restraints without proper authority;

(E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the consumer; or

(F) deprivation of food, clothing, shelter, or healthcare by staff responsible for providing these services to a consumer.

"Advocate" means an employee of the Office of Consumer Advocacy, who provides assistance to consumers in exercising their rights, listens to their concerns, encourages them to speak for themselves, seeks to resolve problems, helps protect their rights, conducts investigations and seeks to improve the quality of the consumer's life and care.

"Advocate General" means the chief administrative officer of the ODMHSAS Office of Consumer Advocacy.

"Board" means Board of Mental Health and Substance Abuse Services.

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

"Client record" means written information including assessment information, description of services provided services plan, and other information on an individual client.

"Community mental health center" or **"CMHC"** means a facility 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 mental health or substance abuse evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contacts ~~[43A O.S. § 1-103(g)] and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof~~.

"Consumer committee" or **" Consumer government"** means any established group within the facility comprised of consumers, led by consumers and which meets regularly to address consumer concerns to support the overall operations of the facility.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house or residential community program operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

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

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse services.

"Designated record set" means health information, in any medium including paper, oral, video, electronic, film, audio and digital, maintained by or for facilities operated by ODMHSAS for the purpose, in whole or in part, for making decisions about a consumer, that is:

(A) The medical records about a consumer including but not limited to the intake, screenings, assessments, history and physical examination, psychosocial evaluation, consultation report(s), treatment and continuing care plan, medication record(s), progress notes, psychometric/psychological testing results, discharge assessment, discharge plan, discharge summary, physician orders, immunization record(s), laboratory reports, ancillary therapy notes and reports, and case management records; or

(B) The eligibility, billing and payment information and minimum data sets maintained by or for the facility.

(C) Records that are sometimes filed with the medical records but are not part of the designated record set include:

(i) Administrative records including court commitment paperwork, critical incident reports~~,~~ or peer review ~~or utilization review~~ documents; and

(ii) Information compiled in anticipation of litigation.

"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.

"Exploitation" or **"exploit"** means an unjust or improper use of the resources of a consumer for the profit or advantage, pecuniary or otherwise, of a person other than the consumer through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

"Facility" means a public or private agency, corporation, partnership, or other entity operated or certified by ODMHSAS or with which ODMHSAS ~~contacts~~ contracts to provide the physical custody, detention or treatment of consumers.

"Guardian" means a person appointed by a court to ensure the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the unit, are met, to manage the estate or financial resources of the unit, or both. As used in this subchapter, guardian includes a general or limited guardian of the person, a general or limited guardian of the estate, a special guardian, and a temporary guardian.

"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.

"Maltreatment" is used collectively in this Subchapter to refer to abuse, neglect, exploitation, mistreatment, sexual abuse or exploitation, and rights violation.

"Minor" means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person who has been certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Mistreatment" means an act or omission that:

(A) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;

(B) results in or creates the risk of injury to a consumer; or

(C) unintentional excessive or unauthorized use of force.

"Money" means any legal tender, note, draft, certificate of deposit, stock, bond, check or credit card.

"Neglect" means:

(A) the failure of staff to provide adequate food, clothing, shelter, medical care or supervision which includes, but is not limited to, lack of appropriate supervision that results in harm to a consumer;

(B) the failure of staff to provide special care made necessary by the physical or mental condition of the consumer;

(C) the knowing failure of staff to provide protection for a consumer who is unable to protect his or her own interest; or

(D) staff knowingly causing or permitting harm or threatened harm through action or inaction that has resulted or may result in physical or mental injury.

"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.

"Program of 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.

"Privacy Officer" means the employee of ODMHSAS designated to provide guidance on state and federal privacy laws.

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

"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 which 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, which is certified pursuant to 43 O.S. § 3-315 as a Community Residential Mental Health Facility and offers or provides residential accommodations, food service and supportive assistance to its residents or houses any resident requiring supportive assistance that are

ambulatory, essentially capable of managing their own affairs and not routinely requiring nursing care or intermediate care.

"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.

"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.

"Sexual abuse" includes:

(A) rape, incest, or lewd and indecent acts or proposals, as defined by state law, by staff;

(B) oral, anal or vaginal penetration of a consumer by staff;

(C) the anal or vaginal penetration of a consumer by staff with any other object; or

(D) for the purpose of sexual gratification, the touch, feeling or observation of the body or private parts of a consumer by staff; or

(E) indecent exposure by staff providing services to the consumer.

"Sexual exploitation" by staff with regard to a consumer includes:

(A) staff allowing, permitting or encouraging a consumer to engage in sexual acts with others or prostitution, as defined by state law, which results in harm to a consumer; or

(B) staff allowing, permitting, encouraging, or engaging in the lewd, obscene or pornographic photographing, filming or depicting of a consumer in those acts as defined by state law.

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

"Staff" means an agent or employee of a public or private institution or facility responsible for the care of a client or consumer and providing services to the client or consumer.

"Transitional living services" means housing maintained and operated by a certified domestic violence and sexual assault program.

"Treatment Advocate" is a family member or other concerned individual designated by a consumer to participate in treatment and discharge planning, and acts in the best interest of and serves as an advocate for the consumer.

"Verbal Abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors by staff that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

SUBCHAPTER 3. CONSUMER RIGHTS

PART 1. ~~INPATIENT~~ MENTAL HEALTH AND DRUG OR ALCOHOL ABUSE SERVICES CONSUMER BILL OF RIGHTS

450:15-3-1. Applicability

This Part is applicable to all facilities providing ~~inpatient~~ mental health and drug or alcohol abuse ~~treatment~~ services either operated by, certified by, or under contract with, ODMHSAS or subcontracting through a facility which is under contract with ODMHSAS.

450:15-3-2. General rights statement

(a) Consumers of mental health or drug or alcohol abuse services shall retain all rights, benefits and privileges guaranteed by the laws and Constitution of the State of Oklahoma and the United States of America, except those specifically lost through due process of law.

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

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

(d) Each consumer has the right to a humane psychological environment protecting them from harm, abuse, and neglect.

(e) In addition to the rights described in (a) through (d) of this Section, all persons receiving ~~inpatient~~ mental health or drug or alcohol abuse services shall have the rights guaranteed by this Part, referred to as the ~~Inpatient~~ Mental Health and Drug or Alcohol Abuse Services Bill of Rights, unless an exception is specifically authorized by this Part or an order of a court of competent jurisdiction.

450:15-3-3. Notification of the ~~Inpatient~~ Bill of Rights

(a) Each consumer, upon admission to a facility or program, shall be notified of rights guaranteed by this Part.

(1) If the consumer is a minor, his parent or legal guardian shall also be informed.

(2) If the consumer has a court ordered guardian, the guardian shall be informed.

(b) Notification shall be accomplished by:

(1) Providing the consumer with a synopsis, as set forth in OAC 450:15-3-27 and, if requested, the full ~~Inpatient~~ Mental Health and Drug or Alcohol Abuse Services Bill of Rights, OAC 450:15-3-4 through 450:15-3-25. If the consumer cannot understand the language in the synopsis, an oral explanation of the synopsis shall be given in a language the person can understand; and the provision of the ~~Inpatient~~ Mental Health and Drug or Alcohol Abuse Services Bill of Rights shall be documented in the consumer's record and signed by the person giving the synopsis or explanation; and

(2) Posting the synopsis of, or the full ~~Inpatient~~ Mental Health and Drug or Alcohol Abuse Services Bill of Rights, in a conspicuous place ~~on~~ in each consumer living area, and in area(s) of the facility receiving consumers, visitors and the public.

(c) Facilities shall not have internal operating procedures more restrictive than the ~~Inpatient~~ Mental Health and Drug or Alcohol Abuse Services Bill of Rights. Every consumer shall be notified of facility and unit procedures with which he or she

is expected to comply, and ~~the sanctions that could be imposed for violation~~ and consequences for non-compliance.

(d) Employees and volunteers shall be oriented regarding consumers' rights and the constraints of this Part.

450:15-3-4. Right to contact relative or friend or attorney upon admission [REVOKED]

~~Every consumer shall be allowed to contact a relative or friend and his or her attorney immediately upon admission, either by telephone or mail (43A O.S. § 5-201). No person shall interfere with this right.~~

450:15-3-5. Right to access to attorneys, personal physician, clergy [REVOKED]

~~No limitation may be imposed on a consumer's right to communicate by phone, mail or visitation with his or her attorney(s), clergy and personal physician, except to the extent that reasonable times and places may be established. No consumer shall be coerced directly or indirectly into divulging the nature of the confidential communication.~~

450:15-3-6. Right to communication

(a) Every consumer ~~is entitled to communicate at all times by uncensored, sealed letter mail, either sent out or received, with the director of the facility, relatives, friends, the court which ordered commitment, his or her personal attorney, any physician and other state, federal or local agencies and courts. Sealed mail either to, or from, consumers shall not be delayed in transmittal except as determined by the treating physician and documented in the consumer's clinical record. However, the executive director of the facility or designee may establish procedures regarding the delivery and opening of consumer mail if determined necessary for security or safety precautions~~ shall be allowed to contact one individual immediately upon entry into such place of detention or admission for purposes of notification of the consumer's location (43A O.S. § 5-201).

(b) Every consumer is entitled to ~~unimpeded, private and uncensored communication by telephone and by personal visit, with persons of his or her choice, except as determined by the treating physician and documented in the consumer's medical record~~ communicate by uncensored, sealed mail.

(1) Each program shall provide writing materials and reasonable amounts of postage to ensure correspondence can be written and mailed for those consumers who cannot procure the same.

(2) The facility director may establish procedure regarding the mailing, delivery and opening of consumer mail if determined necessary for security or safety precautions. A consumer's correspondence may be restricted as determined by the treatment team. Either occurrence shall be documented in the consumer's record.

(3) No correspondence shall be placed in the consumer's record or any program record without the written consent of the consumer.

(c) ~~No correspondence received by the consumer shall be placed in the consumer's medical record, or any other of the facility's records unless such correspondence provides important information regarding the consumer's medical or mental condition. This prohibition does not apply to correspondence sent directly to facility staff from others.~~ Every consumer is entitled to unimpeded, private and uncensored communication by telephone and by personal visit with persons of his or her choice.

(1) Each program shall make telephones readily available within the facility to ensure calls can be conveniently made and received.

(2) Each program shall establish in writing reasonable times and places for the use of telephones and for visitation and communicate such to consumers and the consumer's family or friends. Each program shall post hours for visitation. Requests for telephone usage or visitation outside the established hours shall be addressed on an individual basis by the consumer's treatment team.

(3) Telephone usage and visitation may be restricted as determined by the treatment team and documented in the consumer's record.

~~(d) Each facility shall make telephones available throughout the facility to ensure calls can be conveniently made and received.~~

~~(e) Each facility shall make space available for visitation.~~

~~(f) Each facility shall provide writing materials and reasonable amounts of postage to ensure correspondence can be written and mailed for those who cannot procure the same.~~

~~(g) Reasonable times and places for the use of telephones and for visitation shall be established in writing and communicated to consumers and family, including posting of times and places in conspicuous places, such as the unit or facility bulletin boards in the consumer areas of units and in areas of the facility normally used by the public. Visitation times shall include a liberal mix of weekdays and weekend days, business hours and after-hours in order to maximize the opportunity for visitations.~~

450:15-3-8. Right to freedom from mistreatment, abuse and neglect

(a) Staff shall not mistreat, physically, sexually, verbally or otherwise abuse any consumer. Visitors or other consumers shall not be permitted to physically, sexually, verbally or otherwise abuse any consumer. Staff shall not neglect any consumer.

(b) ~~All occurrences or reports of abuse or neglect, whether by staff, consumers or others, shall be promptly reported to the person in charge of the facility.~~ The facility director shall ~~insure~~ ensure a critical incident report is completed for each alleged occurrence of abuse or neglect and a copy is forwarded to the Office of Consumer Advocacy ~~an investigation conducted~~ for review or investigation.

(c) In cases of sexual or physical abuse, the person in charge of the facility shall promptly inform the County Sheriff or the District Attorney so that a criminal investigation can be initiated.

450:15-3-9. Right to freedom of movement

(a) ~~The freedom of movement of a consumer shall not be restricted more than is necessary to provide treatment services, to prevent injury to the consumer or others or to prevent substantial property damage or as is determined necessary by the executive director of the facility or designee to ensure security and safety and the right to freedom of movement shall not be withdrawn from a consumer to punish or discipline, or as a convenience for staff or the facility. A forensic consumer's freedom of movement may be restricted more if determined by the treating physician in conjunction with the his or her legal status.~~ Each consumer has the right to be treated in the least restrictive environment based on his or her clinical condition and legal status. The consumer's movement shall not be restricted more than is necessary to provide treatment services, to prevent injury to the consumer or others, or prevent substantial property damage.

(b) ~~Withdrawal of privileges must be decided by the treating physician and the reasons for restriction(s) documented.~~ The right to treatment in the least restrictive environment shall not be withdrawn to punish or discipline a consumer, or for the convenience of staff or the facility.

(c) Restriction of this right shall be decided by the treatment team, documented in the consumer's record, and shall be reviewed at the request of the consumer.

(d) Seclusion and restraint may be administered to a non-consenting consumer upon the written order of a physician who has personally examined the consumer and who finds seclusion or restraint is necessary to protect the consumer or other persons. The physician shall document an explanation of the decision to administer seclusion and restraint in the consumer's record. This shall not prohibit emergency seclusion and restraint pending notification of a physician

450:15-3-10. Right to use of money

(a) ~~For purposes of this Section, "money" includes any legal tender, note, draft, certificate of deposit, stock, bond, check or credit card.~~

~~(b)~~ A consumer has the right of ~~easy~~ access to his or her money ~~in his or her~~ that is deposited in the consumer's personal account at the facility ~~and to spend or otherwise use the money as he or she chooses, except as limited in this Section~~.

(~~c~~b) The facility may require either all, or part, of the money which is on the person of a consumer, or which comes to a consumer, or which the facility receives on behalf of the consumer under a benefit arrangement, or otherwise, be deposited with the facility for safekeeping in a personal account in the consumer's name. The money, and transactions affecting it, shall be accounted for in the name of the consumer and recorded in the consumer's account records. The consumer, his or her attorney, or his or her legal guardian shall be provided a copy of the account and transactions at the consumer's or legal guardian's request.

(~~d~~c) A consumer's easy access to his or her money and ability to spend money in his or her account may be denied or limited by the facility only after a determination is made by the treatment team, supported by facts, that the limitation is necessary and essential to prevent the consumer from unreasonably and significantly dissipating his or her assets. Any such denial shall be fully documented in the consumer's ~~medical~~ record. Even where denial is made, the consumer shall continue to be allowed to spend or use the money in ways which would not constitute unreasonable and significant dissipation of his or her assets or engaging in illegal activities including but not limited to exploitation of other consumers.

(~~e~~d) The facility is prohibited from withdrawing funds from a consumer's personal account to pay for services rendered by the facility, except with the written consent of the consumer, if he or she is legally competent, or his or her legal guardian.

(~~f~~e) Money in a consumer's personal account at the facility may be deposited with an outside financial institution at the request of the consumer if he or she is legally competent, or so deposited on the request of a legal guardian.

(~~g~~f) All money, including earnings, in a consumer's personal account shall be delivered to the individual upon his or her release from the facility, or to his or her legal guardian if the individual is under a legal guardianship and the guardian requests the money be delivered to the guardian rather than directly to the individual.

450:15-3-11. Right to personal property

(a) Every consumer is entitled to receive, possess and use all his or her own personal property, ~~including clothing,~~ except ~~in the circumstances and under the conditions below:~~ as limited in this section. The facility director may prohibit certain kinds of personal property. Exclusions shall be documented in the consumer's record and the consumer and his or her family shall be provided a written list of prohibited personal property upon admission. Access to specific personal property may be limited:

(1) ~~Prevent~~ to prevent theft, loss or destruction of property;

(2) ~~Prevent~~ to prevent the consumer from physically harming him or herself or others;

(3) ~~Achieve a compelling treatment objective~~ if the personal property would interfere with the consumer's treatment plan;

(4) ~~To~~ to eliminate the introduction of functionally unsafe equipment into the premises not already specifically controlled by OAC 450:15-3-11 (a)(1); or

(5) ~~As~~ as otherwise listed in facility policy.

(b) Any personal property removed from a consumer's control as determined by the treatment team, and the reasons therefore, shall be noted in the consumer's record. Any personal property so removed shall be safely and prudently stored until it can be returned to the consumer or turned over to a person designated by the consumer with a receipt for the property being obtained. If the facility has concerns of the safety of property being returned, every effort shall be made to turn the property over to a person of the consumer's choice.

450:15-3-12. Right to practice religion of choice

Each consumer shall have the right to practice his or her religious beliefs and be accorded the opportunity for religious worship. No consumer shall be coerced into engaging in, or

refraining from, any religious activity, practice or belief. A consumer who is an adherent to, or a member of, any recognized religious denomination, the principles and tenets of which teach reliance upon prayer or spiritual means alone for healing, shall have the right to choose this method of healing. Also, the parent of a minor person who has been admitted to a mental health facility shall have the right to choose healing by spiritual means through prayer rather than services provided by the facility.

(1) However, should the decision to refuse traditional treatment recommended by the ~~treating physician~~ treatment team result in danger to the consumer or others in the facility, the facility shall have the right to seek judicial relief.

(2) If the consumer has been admitted on a voluntary basis, and makes a decision to refuse traditional treatment recommended by the attending physician, the facility may decide not to serve the consumer and discharge him or her.

450:15-3-14. Right to ~~individualized, competent prompt~~ treatment

(a) ~~Every~~ Each consumer shall be provided with prompt, competent and appropriate individualized treatment that offers the consumer a realistic prospect of improvement. ~~Consumers~~ Each consumer shall be afforded treatment by sufficient numbers of duly qualified facility personnel that meet applicable licensing or certification or accreditation standards and conform to applicable rules of ODMHSAS.

(b) ~~Every~~ Each consumer or his or her legal guardian shall ~~be afforded~~ have the opportunity to be involved in the consumer's treatment. ~~Family members or significant others~~ An individual of the consumer's choice shall ~~be afforded~~ have the opportunity to be involved in the consumer's treatment with the consent of the consumer.

(c) Each consumer shall be free from unnecessary, inappropriate or excessive medication. Medications shall not be used for convenience of staff, to punish, or as a substitute for a treatment program.

(d) If the consumer is involuntarily committed, consideration shall also be given to whether the conditions that resulted in the consumer's commitment still exist.

(e) Each consumer shall be informed of his or her proposed and ongoing treatment, including participation in his or her treatment plan and of the reasonable expectations and consequences of his or her following or not following the plan.

(f) Each consumer is entitled to receive a thorough treatment plan update to determine the value and appropriateness of the present care and treatment being received, and the necessity of continuing the consumer's care in the facility rather than in a less restrictive environment outside the facility.

(g) Each consumer shall be informed of said rights including the right of each consumer voluntarily admitted to refuse treatment and the qualified right of an involuntary consumer to refuse treatment, which shall be noted in the consumer's record.

(h) Each consumer shall be informed of the benefits, risks (including side effects, both long and short term) of medications prescribed.

(i) In the presence of a significant change in the consumer's condition which creates an emergency condition and danger to the consumer or to others, the attending physician may order necessary treatment for the consumer without obtaining informed consent. The circumstances constituting the emergency condition shall be documented in the consumer's record.

(j) Each consumer has the right to know why services are refused and the program shall provide a written explanation concerning the reason he or she was refused certain services.

450:15-3-15. Right to periodic review of treatment plan [REVOKED]

~~(a) Every consumer is entitled to receive a thorough treatment plan update to determine the value and appropriateness of the present care and treatment being received, the necessity of continuing the consumer's care in the facility rather than in a less restrictive environment outside the facility.~~

~~(b) If the consumer is involuntarily committed, consideration shall also be given to whether the conditions which resulted in the consumer's commitment still exist.~~

450:15-3-16. Rights regarding medication and treatment during pre-screening detention

(a) ~~All consumers shall be free from unnecessary, inappropriate or excessive medication. Medications shall not be used for convenience of staff, to punish, or as a substitute for a treatment program.~~

~~(b)~~ During the detention periods authorized by 43A O.S. § ~~5-200~~ 5-204 or during the time set forth for emergency examination, appropriate treatment and medication including psychotropic medications, may be administered to a consenting individual.

(~~c~~b) If a consumer refuses medication and constitutes a risk of harming self or others, then it is the physician's responsibility to initiate emergency detention or involuntary commitment pursuant to 43A O.S. §§ 5-206, et seq.

(~~d~~c) Treatment and medication may be administered to a non-consenting individual under the following conditions pursuant to43A O.S. § 5-204:

(1) upon a written order of a physician who has personally examined the consumer; and

(2) who finds an emergency exists wherein such medication or treatment is necessary to protect the consumer, the facility, or others from serious bodily harm; and

(3) who so notes the emergency in the individual's medication record, with an explanation of the facts leading up to the decision to administer treatment and medication, including psychotropic medication. Use of involuntary medication shall not continue beyond the emergency unless either the consumer consents or the consumer is declared legally incompetent and the guardian consents.

(~~e~~d) Seclusion and restraint may be administered to a non-consenting individual upon the written order of a physician who has personally examined the patient and who finds that seclusion or restraint is necessary to protect the patient, the facility, or other persons. The physician shall note in the patient's chart an explanation of the decision to administer

seclusion and restraint. This shall not prohibit emergency seclusion and restraint pending notification of a physician.

(~~f~~e) If the person is under the influence of psychotropic medication during any court hearing held pursuant to 43A O.S. § 5-400, the court and the jury, if any, shall be advised by the District Attorney at the beginning of such hearing that such consumer is under the influence of psychotropic medication, the purpose and effect of the medication.

450:15-3-17. Right to informed consent regarding treatment [REVOKED]

~~(a) Consumers shall be informed of their proposed and ongoing treatment, including participation in their treatment plan (450:15-3-14) and of the reasonable expectations and consequences of his or her following or not following the plan.~~

~~(b) Consumers shall be informed of said rights including the right of consumers who are voluntarily admitted to refuse treatment and the qualified right of involuntary consumers to refuse treatment, which shall be noted in the consumer's record.~~

~~(c) Consumers shall be informed of the benefits, risks (including side effects, both long and short term) of medications prescribed.~~

~~(d) In the presence of a significant change in the consumer's condition which creates an emergency condition and danger to the consumer or to others, the attending physician may order necessary treatment for the consumer without obtaining informed consent. The circumstances constituting the emergency condition shall be documented in the consumer's medical record.~~

450:15-3-18. Right to consultant opinions

(a) Every consumer has the right to request the opinion of an outside medical or psychiatric consultant at his or her own expense and the facility shall not impede access between the consultant and the consumer.

(b) Every consumer shall have a right to an internal consultation upon request, at no expense. The second opinion shall become part of the ~~clinical~~ consumer record.

(c) The ~~clinical~~ facility's medical director shall review the second opinion as well as the treatment team's opinion and shall document decision.

450:15-3-21. Rights regarding labor by consumers

(a) A consumer may perform labor which contributes to the operations and maintenance of the facility for which the facility would otherwise employ an individual under all the following conditions:

(1) The consumer voluntarily agrees to perform the labor;

(2) Engaging in the labor would not be inconsistent with the consumer's treatment plan;

(3) The amount of time or effort necessary to perform the labor would not be excessive as determined by and outlined in the treatment plan;

(4) The consumer is compensated appropriately and in accordance with the applicable federal and state minimum wage laws; and

(5) Discharge and privileges are not conditioned upon the performance of such labor.

(b) The provisions of this section shall not apply to bonafide "work therapy" which is part of the consumer's treatment plan. Work therapy shall be:

(1) in the best interest of the consumer;

(2) therapeutic in nature and purpose;

(3) part of the consumer's documented treatment plan;

(4) documented in the consumer's ~~medical~~ record with a rationale for the work therapy;

(5) voluntarily entered into by the consumer;

(6) compensated by the facility at a rate derived from the value of the work performed; and

(7) compensated in accordance with federal and state minimum wage laws if the primary benefit is to the facility.

(c) The consumer is provided training appropriate to the labor to be performed.

(d) Subsections (a), ~~and~~ (b) and (c) of this section shall not apply to matters of personal housekeeping, personal maintenance, communal living or tasks oriented to improving life skills. These activities shall not primarily benefit the facility.

(~~d~~e) Payment pursuant to this section shall not be applied by the facility to offset the costs of maintenance of persons receiving treatment in the facility, unless the consumer authorized such payment or offset in writing.

450:15-3-23.1. Right to assert grievances

(a) A consumer shall have a right to assert grievances with respect to an alleged infringement of his or her rights and shall have the right to have such grievances considered through a fair, timely and impartial grievance procedure.

(b) No consumer shall be retaliated against, coerced, or treatment altered either solely or partially because of his or her having asserted, a grievance regarding his or her rights.

450:15-3-25. Right to information and services to be provided consumers being discharged

(a) ~~All consumers~~ Each consumer shall be involved in ~~their~~ his or her discharge planning. ~~and plan except when the consumer is returning to a correctional facility. In addition, with the exception noted above and with~~ With the permission of the consumer, ~~the consumer's family or designated friend(s)~~ an individual of his or her choice shall be encouraged to be involved in the consumer's discharge planning and afforded such involvement.

(b) No consumer, except when the consumer is discharged to a correctional facility, shall be discharged without:

(1) Sufficient medications to enable the consumer to continue the course of medication prescribed until an initial outpatient appointment pursuant to 43A O.S. § 7-102 (B);

(2) A referral and appointment, in writing, with a community-based facility for aftercare and followup, if consumer accepts such referral;

(3) Clothing suitable to the season and weather;

(4) Presence, or provision for, transportation to the place to which consumer has been discharged; and

(5) All the consumer's funds being returned to the consumer.

(c) Consumers may refuse any or all of (b) of this Section. For consumers released by the court, at a hearing for commitment it may not be possible to provide all of the requirements specified in this section. Such situations must be documented in the consumer's clinical record.

(d) As a part of the regular discharge planning procedure, consumers likely to be in need of public assistance after their discharge from the facility, shall be assisted in meeting with the local County Department of Human Services worker and in making application for any benefits for which they may be eligible.

450:15-3-27. Synopsis of ~~inpatient mental health~~ the bill of rights

(a) The synopsis in (b) of this Section shall be used when an abbreviated format of 450:15-3-4 through ~~450:15-3-26~~ 450:15-3-25 is used to supply a consumer or others with an overview of the bill of rights. A copy of the synopsis shall be prominently posted in each consumer treatment unit and in consumer admissions, visiting and public areas.

(b) ~~All facilities operated by, certified by, and under contract with ODMHSAS~~ Facilities shall support and protect the fundamental human, civil, and constitutional rights of the individual consumer. Each consumer has the right to be treated with respect and dignity and will be provided the synopsis of the Bill of Rights as listed below.

(1) Each consumer shall retain all rights, benefits, and privileges guaranteed by law except those lost through due process of law.

(2) Each consumer has the right to receive services suited to his or her condition in a safe, sanitary environment regardless of race, religion, sex, ethnicity, age, degree of disability, handicapping condition.

(3) Each consumer, on admission, shall have the absolute right to private uncensored communication with a relative, friend, clergy, or attorney by phone or mail, at the facility's expense if the consumer is indigent.

(4) ~~Consumers retain~~ Each consumer retains the right of confidential communication with their attorney, personal physician, or clergy.

(5) ~~Every~~ Each consumer is entitled to uncensored private communication (letter, telephone, personal visits); such letters or copies of letters shall not be kept in consumer treatment records.

(6) No consumer shall be neglected or sexually, physically, verbally, or otherwise abused.

(7) Each consumer shall receive treatment in the least restrictive environment and have the maximum freedom of movement consistent with his or her clinical condition and legal status.

(8) Each consumer shall have easy access to his or her personal funds deposited with the finance office, and shall be entitled to an accounting. A limitation on access to funds may be made when it is determined by the facility's director to be necessary and essential to prevent the consumer from unreasonably and significantly dissipating his or her assets.

(9) ~~Consumers~~ Each consumer may have ~~their~~ his or her own clothing and other personal possessions. This right can be forfeited if the property is potentially dangerous to the consumer, others, or if the property is functionally unsafe.

(10) Each consumer shall have the right to practice his or her religious belief and be accorded the opportunity for religious worship. No consumer shall be coerced into engaging in or refraining from any religious activity, practice, or belief.

(11) ~~Consumers~~ Each consumer legally entitled to vote shall be assisted to register and vote when they so request.

(12) Each consumer shall be provided with prompt, competent, and appropriate treatment; and an individualized treatment plan. A consumer shall participate in his or her treatment programs and may consent or refuse to consent to the proposed treatment. The right to consent or refuse to consent may be abridged for those consumers adjudged incompetent by a court of competent jurisdiction and in emergency situations as defined by law. If the consumer permits, family shall be involved.

(13) Every consumer's record shall be treated in a confidential manner.

(14) No consumer shall be required to participate in any research project or medical experiment without his or her informed consent as defined by law. Refusal to participate shall not affect the services available to the consumer.

(15) A consumer may voluntarily participate in work therapy and must be paid fair compensation. However, each consumer is responsible for personal housekeeping tasks without compensation.

(16) A consumer shall have the right to assert grievances with respect to an alleged infringement on his or her rights.

(17) Consumer shall be permitted to establish and participate in a consumer committee or consumer government by unit or facility wide.

(18) A consumer being discharged shall have plans for outpatient treatment, sufficient medication, suitable clothing for the season, housing information and referral, and if consumer permits, family involvement in the plan.

(19) Each consumer has the right to request the opinion of an outside medical or psychiatric consultant at his or her own expense or a right to an internal consultation upon request at no expense.

(20) No consumer shall be retaliated against or subjected to any adverse change of conditions or treatment solely or partially because of his or her having asserted his or her rights.

(c) 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.

(d) Each affected facility 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.
(e) The ODMHSAS Office of Consumer Advocacy, in any investigation or monitoring shall have access to consumer, facility records and facility staff as set forth in OAC 450:15-7-3.

450:15-3-28. Right to name a Treatment Advocate

(a) All adult mental health consumers being served by a licensed mental health professional shall be informed by the LMHP or the mental health treatment facility that the consumer has the right to designate a family member or other concerned individual as a treatment advocate. The program shall have written policies and procedures ensuring this provision.
(b) The consumer shall not be coerced, directly or indirectly, into naming or not naming a Treatment Advocate or choice of Treatment Advocate or level of involvement of the Treatment Advocate. Any individual so designated shall at all times act in the best interests of the consumer and comply with all conditions of confidentiality.
(c) No limitation may be imposed on a consumer's right to communicate by phone, mail or visitation with his or her Treatment Advocate, except to the extent that reasonable times and places may be established.
(d) The Treatment Advocate may participate in the treatment planning and discharge planning of the person being served to the extent consented to by the consumer and permitted by law.
(e) The consumer and Treatment Advocate shall be notified of treatment and discharge planning meetings at least 24 hours in advance.
(f) All LMHPs or mental health treatment facilities shall use a Treatment Advocate Designation form which will minimally include:
(1) the consumer's choice to name or not name a Treatment Advocate;
(2) identify any specifically named person;
(3) indicate the level of involvement the identified Treatment Advocate shall have.
(4) a space where the Treatment Advocate will indicate his or her intention of serving according to the consumer's specifications;
(5) an agreement that the Treatment Advocate will comply with all standards of confidentiality; and
(6) both the signature of the consumer and the Treatment Advocate.
(g) Verbal confirmation of the written information proposed in the form shall be permitted until such time as the Treatment Advocate can be present to sign the designated form.
(h) The consumer may change or revoke the designation of a treatment advocate at any time and for any reason.
(i) A copy of the completed form shall be given to the consumer and the treatment advocate. The original shall be maintained in the consumer's record.
(j) The Treatment Advocate form shall be reviewed with the consumer at each point of treatment planning and treatment planning review to afford the consumer an opportunity for review and amendment.

PART 3. ~~INPATIENT MENTAL HEALTH~~ CONSUMER GRIEVANCE PROCEDURE

450:15-3-45. ~~Grievance~~ Consumer grievance policy and procedures ~~and policy facilities under contract with ODMHSAS~~

Facilities ~~either under contract with ODMHSAS, or subcontracting through a facility which is under contract with ODMHSAS, for the provision of inpatient services~~ shall have a written grievance policy that includes:
(1) A written notice of the grievance procedure is provided to each consumer or guardian and, ~~if involved with the consumer, to family member(s) or significant other(s).~~ to an individual of the consumer's choice;
(2) Time frames for the grievance procedures which allow for ~~a resolution within fourteen (14) days.~~ an expedient resolution of consumer grievance(s);
(A) Inpatient and residential programs shall be a seven (7) day timeframe;
(B) Outpatient, intensive outpatient and day treatment programs shall be a fourteen (14) day timeframe;
(C) Crisis stabilization, medical detoxification and social detoxification programs shall have a three (3) day timeframe;
(3) The provision of ~~Procedure for providing~~ written notification to the consumer ~~advising that he or she has the right to make a complaint to the ODMHSAS Consumer Advocacy Division.~~ of the grievance outcome and a mechanism by which an individual may appeal the outcome;
(A) ODMHSAS-operated facility procedures shall include a process by which the consumer may appeal the grievance outcome to the Consumer Advocacy Division.
(B) The Consumer Advocacy Division shall develop procedures for such external appeals;
(4) A procedure for advising the consumer he or she has the right to make a complaint to the ODMHSAS Consumer Advocacy Division and the mechanism for contacting the Consumer Advocacy Division;
(5) Name(s) of the individual(s) ~~who are~~ responsible for coordinating the program's grievance procedure and the individual responsible for or authorized to make decisions for resolution of the grievance. In the instance where the decision making is the subject of a grievance, decision making authority shall be delegated~~.~~;
(~~5~~6) A mechanism to monitor the grievance process and improve performance based on outcomes~~.~~;
(~~6~~7) An annual review of the grievance policy and procedure~~.~~; and
(8) The ongoing monitoring of the grievance process and, based on outcomes, adjust and improve processes.

PART 7. CONSUMER ACCESS TO HEALTH INFORMATION, FACILITIES OPERATED BY ODMHSAS

PART 9. CLIENT RIGHTS, DOMESTIC VIOLENCE, BATTERER'S INTERVENTION SEXUAL ASSAULT PROGRAMS AND SHELTERS

450:15-3-70. Applicability

This Part is applicable to those domestic violence, batterer's intervention and sexual assault programs and shelters certified by, or with which ODMHSAS contracts pursuant to 43A O.S., § 3-314.1 et seq.

450:15-3-71. Client right to information, refused services

A client, or potential client, has the right to know why services are refused and the program shall provide a written explanation concerning the reason he or she was refused certain services.

450:15-3-72. Client rights

(a) Each client 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 program shall ensure each client has the rights which are listed below:

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

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

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

(4) Each client has the right to an environment which provides reasonable privacy, promotes personal dignity, and provides opportunity for the client to improve her or his functioning.

(5) Each client has the right to receive services suited to her or his needs 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 client, on admission, has the absolute right to communicate with a relative, friend, clergy, or attorney, by telephone or mail, at the expense of the program if the client is indigent.

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

(8) Each client has the right to uncensored, private communications including, but not limited to, letters and telephone calls. Copies of any personal letter, sent or received, by a client shall not be kept in her or his client record without the written consent of the client.

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

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

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

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

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

(12) The records of each client shall be treated as confidential.

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

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

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

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

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

(b) Programs shall have written policy and procedures, and shall provide documented staff training to insure the implementation of each and every client right stated in this section.

(c) Programs shall have written policy and procedures to insure each client enjoys, and has explained to him or her, these rights; and these rights are visibly posted in both client and public areas of the facility.

(d) The ODMHSAS Office of Consumer Advocacy, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff.

450:15-3-73. Client's grievance policy and procedures

(a) Each program shall have a written client's grievance policy providing for, but not limited to, the following:

(1) Written notice of the grievance and appeal procedure provided to the client; and, if involved with the client, to family members or significant others;

(2) Time frames for the grievance policy's procedures, which allow for an expedient resolution of client grievances;

(A) Transitional living and shelter services' timeframes shall be seven (7) days;

(B) Non-transitional living and non-shelter services' timeframes shall be fourteen (14) days;

(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authority to make decision(s) for resolution of the grievance and the individual responsible for or authorized to make decisions for resolution of grievance. In the instance where the decision maker is the subject of a grievance, decision-making authority shall be delegated;

(4) Provide for notice to the client that he or she has a 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 procedures, with revisions as needed.

PART 11. RESIDENT RIGHTS, MENTAL HEALTH RESIDENTIAL CARE FACILITIES

450:15-3-80. Applicability

This Part is applicable to those mental health residential care facilities operated by, certified by, or under contract with the Oklahoma Department of Mental Health and Substance Abuse Services pursuant to 43A O.S. § 3-315, et seq.

450:15-3-81. Resident rights

(a) Each resident 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 shall insure each resident has the rights specified as follows.

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

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

(3) Each resident has 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 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.

(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 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.

(11) 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.

(12) Each resident shall have the right to practice his or her own religious beliefs, and afforded the opportunity for religious worship. No client shall ever be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.

(13) The records of each resident shall be treated in a confidential manner.

(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.

(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.

(16) The community residential mental health facility shall provide residents who are leaving at the request of the community residential mental health facility all funds and property belonging to him or her at the time of his or her departure.

(17) Each resident shall have the right to establish and to participate in a resident committee or resident government.

(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.

(19) No resident shall ever be retaliated against, or subject to, any adverse conditions because of having asserted his or her rights as aforestated 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 Office of Consumer Advocacy, in any investigation or monitoring shall have access to residents, RCF records and RCF staff as set forth in OAC 450:15-7-3.

450:15-3-82. Resident right to fee information

To insure that the residents have access to the information pertaining to RCF's fee schedule, each resident shall have access to written information about the RCF's fee schedule. The RCF shall provide a written description of the services provided by the RCF, the rates charged for these services, and items for which a resident may be separately charged. THE RCF shall obtain and document in writing the resident's consent prior to their accrual. This policy shall also be available to those individuals who are seeking service. This information shall be visibly posted.

450:15-3-83. Resident right to information, refused services

A resident, or potential resident, has the right to know why services are refused; and can expect an explanation concerning the reason he or she was refused certain services.

450:15-3-84. Resident rights regarding group visitations

(a) Group RCF visitation shall be planned for limited interruption of routine activities, unless the group visitation is the activity. Residents shall have advance notice of visitations and never be referred to by full name without their consent.

(b) Written policies shall be established concerning the protection of resident's rights and privacy during RCF visitation by groups.

(c) Planning shall provide for limited interruption of routine activities. Individual residents shall have advance knowledge of such visitations and shall never be referred to by full name without their consent.

450:15-3-85. Resident grievance policy and procedures

Each RCF shall have a written 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 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.

(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.

SUBCHAPTER 9. CONSUMER RIGHTS, NON-INPATIENT SERVICES [REVOKED]

450:15-9-1. Applicability [REVOKED]

~~This subchapter is applicable to all facilities operated by, certified by, or under contract with, ODMHSAS as a community mental health center, approved treatment facility for substance abuse services, or domestic violence, sexual assault program or batterers' program or community-based structured crisis center, or residential care facility.~~

450:15-9-2. Community mental health centers [REVOKED]

~~The rights for consumers of community mental health centers are set forth in OAC 450:17-11-1 and 450:17-11-2.~~

450:15-9-3. Substance abuse services [REVOKED]

~~The rights for consumers of substance abuse services are set forth in OAC 450:18-11-1 and 450:18-11-2.~~

450:15-9-4. Residential care facilities [REVOKED]

~~The rights for consumers of residential care facilities are set forth in OAC 450:16-15-1 through 450:16-15-4.~~

450:15-9-5. Domestic violence and sexual assault services [REVOKED]

~~The rights for consumers of domestic violence and sexual assault services are set forth in OAC 450:19-11-1 and 450:19-11-2.~~

450:15-9-7. Community-Based Structured Crisis Centers [REVOKED]

~~The rights for consumers of community-based structured crisis centers are set forth in OAC 450:23-9-1 through OAC 450:23-9-2.~~

[OAR Docket #04-869; filed 5-7-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 18. STANDARDS AND CRITERIA FOR ~~SUBSTANCE ABUSE SERVICES~~ ALCOHOL AND DRUG TREATMENT PROGRAMS

[OAR Docket #04-870]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450: 18-1-7. [REVOKED]
Subchapter 3. Substance Abuse Treatment Services
Part 1. Levels of Care
Part 25. Opioid Treatment Programs and Opiate Antagonists and Opiate Agonists
450: 18-3-241. [AMENDED]
Subchapter 7. Facility Record System
Part 1. ~~Facility~~ Record System
450: 18-7-3. [REVOKED]
450: 18-7-3.1. [NEW]
Part 7. Case Management
450: 18-7-63. [NEW]
Part 15. Other Case Record Materials
450: 18-7-143. [AMENDED]
Subchapter 11. Consumer Rights
450: 18-11-1. [AMENDED]
450: 18-11-2. [AMENDED]
450: 18-11-3. [AMENDED]
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Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-306, 3-317, 3-403(1), 3-404, 3-406, 3-415 and 3-416.
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In accordance with the Administrative Procedures Act, the proposed rule revisions to Chapter 18 are part of the Department's review of Title 450. These proposed permanent rules comply with the federal the Health Insurance Portability and Accountability Act (HIPAA) mandates which, in 2003, the Department promulgated emergency rules. These emergency rules expire in July 2004. Proposed amendments are intended to enhance services for consumers of substance abuse treatment by organizations operated or certified by or under contract with ODMHSAS, 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, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

450:18-1-7. New standards and criteria [REVOKED]

~~(a) As new standards and criteria become effective, all affected facilities shall comply within one hundred twenty (120) calendar days of the effective date for standards and criteria promulgated under regular rulemaking.~~
~~(b) For standards and criteria 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 3. SUBSTANCE ABUSE TREATMENT SERVICES

PART 1. LEVELS OF CARE

PART 25. OPIOID SUBSTITUTION TREATMENT PROGRAMS AND OPIATE ANTAGONISTS AND OPIATE AGONISTS

450:18-3-241. Opioid treatment program services

(a) All certified substance abuse facilities having opioid substitution treatment programs shall be in compliance with Oklahoma Statute 43A, §§ 3-601, 3-602 and 3-603.
(b) Opioid Substitution Treatment Programs shall be approved by the Alcohol and Drug Abuse Prevention, Training and Rehabilitation Authority (State Board of Mental Health and Substance Abuse services [43A O.S. § 3-404.
(c) Any conviction for a violation of any rule in this Part which has been promulgated pursuant to the provisions of 43A O.S. § 3-601 shall be a felony [43A O.S. § 3-601(B)].

(d) Any federally designated Class II controlled dangerous substance when used by a opioid substitution treatment program for persons with a history of addiction, or physiologic dependence, shall only be used in treating persons with a history of addiction of two (2) years or more, or persons with a one (1) year history, as defined by Chapter 1, Part 8 of Title 42 of the Code of Federal Regulations, and documentation of attempting and failing at another type of treatment.

(e) If clinically appropriate, the program physician may waive the requirement of a one (1)-year history of opioid addiction for; patients within six (6) months of release from a penal institution, for patients with a pregnancy verified by the program physician and for patients having received treatment within two (2) years of discharge.

(~~e~~f) Opioid substitution treatment programs shall report all persons receiving opioid substitution treatment to the ODMHSAS. This report shall be made in a form requested by ODMHSAS and within twenty-four (24) hours of admission or discharge of any patient. Opioid substitution treatment programs shall also participate in the registries of adjoining states when the programs are within one hundred twenty-five (125) miles of the boundaries of the adjoining state.

(~~f~~g) Opioid substitution treatment programs shall notify the ODMHSAS of plans to either close, or relocate the program not less than thirty (30) days prior to said closure, or relocation. Relocation shall be contingent upon ODMHSAS certification of any treatment location.

(~~g~~h) ~~A~~ An opioid substitution treatment program shall use opioid antagonists and agonists in conjunction with other treatment modalities such as, but not limited to, individual, family and group therapy; vocational training and placement; and other modalities enhancing positive life style changes in the consumer.

(~~h~~i) Consumers accepted for opioid substitution treatment shall attend prescribed counseling as mandated in his or her individualized treatment plan.

(~~i~~j) Opioid substitution ~~addiction~~ treatment programs shall be in compliance with the following:

(1) Currently licensed by the U. S. Drug Enforcement Agency; approved by the Substance Abuse and Mental Health Service Administration.

(2) The program shall operate a minimum of forty (40) hours per week in outpatient settings and twenty-four (24) hours per day in inpatient and residential program settings.

(3) Medication dispensing shall be available six (6) days per week in outpatient programs; and seven (7) days per week in inpatient and residential programs.

(4) Outpatient programs shall provide at least two (2) hours per day either prior to 9:00 a.m. or after 5:00 p.m. for dispensing medication and counseling services.

(5) Consumer's ~~maximum~~ daily opioid dosage shall conform with guidelines as set for in 42 CFR (Code of Federal Regulations), Chapter 1, Part 8.

(6) The attending physician shall make all recommendations for medication dosages ~~above the usual level~~.

(7) All female consumers shall have a pregnancy test on admission and at least annually thereafter, unless otherwise indicated.

(8) Take-home medication doses may only be supplied in full compliance with those conditions specified in 42 CFR, Chapter 1, Part 8.

(9) Transient consumers shall be served, and provided for, in accordance with written policy and procedures which shall be in compliance with Federal Drug Administration Guidelines for opioid substitution treatment programs.

(10) A standard medication fee for consumers receiving 100 mg or ~~and~~ less of methadone per week shall be no more than $55.00. The fee for consumers receiving more than 100 mg ~~or more~~ of methadone shall be no more than $65.00.

(11) The program shall develop specific program requirements for consumers. Noncompliance may result in termination, depending upon the nature of the violation. These rules shall encompass, but are not limited to, physical violence directed at staff or other consumers; possession, selling, distributing, using, or otherwise "dealing" in any illicit drug or chemical; abusive language or behavior; positive urine tests for non-prescribed medications and drugs; failure to keep scheduled counseling sessions.

(12) Security shall be maintained over all stocks of medication, the manner in which it is received, stored and distributed according to the regulations of the ~~U. S.~~ Drug Enforcement Administration.

(13) During dispensing hours, at least two (2) staff members shall be present on the premises.

(14) Only medically licensed personnel shall be allowed access to, or responsibility for, opioid medications.

(15) Additional requirements, and exceptions, for each type of opioid substitution treatment services shall apply, as required by 42 CFR, Chapter 1, Part 8.

(~~j~~k) Admission requirements for opioid substitution treatment programs:

(1) Admissions to opioid substitution treatment programs shall be limited to persons meeting the current applicable ASAM Patient Placement Criteria admission criteria. These criteria shall be a part of the programs written policy and procedures.

(2) Opioid substitution treatment programs shall evaluate as part of the biopsychosocial asessment

(A) Social History,

(B) Physical Examination,

(C) Ordered Laboratory Reports, and

(D) Psychiatric Evaluation when indicated and ordered.

(3) All applicants shall sign a written consent for opioid treatment.

(4) The facility shall document the need for admission of the applicant to the opioid substitution treatment program.

(5) Upon completion of the admission evaluation an individualized treatment plan shall be developed, including, but not limited to:

(A) Projected length of treatment;

(B) Medication Protocol;

(C) Measurable long and short term treatment goals;

(D) Primary and supportive services to be utilized with the consumer;

(E) Type and frequency of therapeutic activities in which consumer will participate;

(F) Documentation of the consumer's participation in the development of the plan;

(G) Staff who will be responsible for the consumer's treatment.

(~~k~~l) Treatment and rehabilitation services shall be made available to all consumers and shall minimally include:

(1) A minimum of one (1) counseling session per week until the consumer is fully stabilized;

(2) Individual and group counseling for spouses, parents, or significant others as needed;

(3) Vocational or educational counseling and referral; and

(4) Referral for additional services as outlined by the individualized treatment plan.

(m) Compliance with 450:18-3-241 may be determined by a review of the following:

(1) Facility policy and procedures;

(2) Client records;

(~~4~~3) Interviews with staff and clients; and

(~~5~~4) Any other supporting documentation.

SUBCHAPTER 7. FACILITY RECORD SYSTEM

PART 1. ~~FACILITY~~ RECORD SYSTEM

450:18-7-3. Confidentiality, substance abuse records [REVOKED]

~~(a) Consumer records and clinical information are confidential and are protected under the provisions of 43A O.S. §§ 3-422 and 3-423; and of [U.S.] 42 CFR, Part 2. The facility shall have policy and procedures protecting this confidentiality (which shall be communicated to the consumer for consumers who have not been referred from the criminal justice system), which shall include, but not be limited to:~~

~~(1) Medical 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 may be released without the consent required in 450:18-7-3(a) (2) when:~~

~~(A) It is required to fulfill any statutorily required reporting of child abuse (10 O.S., § 7005(1.7) and abuse of elderly or incapacitated adults (43A O.S., § 10-104); or~~

~~(B) As provided by 10 O.S. §§ 7005(1.1) through 7005(1.3) when the facility has a consumer who is the subject of a court proceeding pursuant to the provisions of the Oklahoma Children's Code; or~~

~~(C) On the order of a court of competent jurisdiction; or~~

~~(D) 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 the ODMHSAS, or another contracted holder of a qualified service agreement.~~

~~(4) Restricting personal access of present or former consumers to their records in a manner conforming to 43A O.S. § 1-109(B).~~

~~(5) With the consent of the consumer, providing information to responsible family members as provided and limited in 43A O.S. § 1-109(C)(1 through 5).~~

~~(6) The reviews of records by state or federal accrediting, certifying, or funding agencies may occur to verify services or facility 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 or 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)]"~~

~~(viii)There shall be a statement in bold face, stamped upon each page of information provided in the release stating, "This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR, Part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR, Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient."~~

~~(b) For consumers who have been referred from the criminal justice system, the following shall be applicable.~~

~~(1) The name and address of the facility making the disclosure of information; and the name and title of the person completing the information disclosure.~~

~~(2) The name of the person, title (if any), and organization to which the information is being disclosed.~~

~~(3) The name of the consumer.~~

~~(4) The purpose or need for the disclosure.~~

~~(5) The extent and type of information being disclosed.~~

~~(6) State a specified time, or the occurrence of a specified event, the consent is revoked. In no event may this date be later than the final disposition of the criminal proceeding.~~

~~(7) On each page of information released, in bold face type, shall be stamped, "The information disclosed may only be redisclosed to carry out the recipient's official duties with regard to the consumer's criminal proceeding in reference to which the consent to release confidential information was made by the consumer."~~

~~(8) In bold face type, the 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, hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS) [63 O.S. § 1-1502(B)]."~~

~~(9) The date on which the consent was signed.~~

~~(10) The signature of the consumer or legal guardian.~~

~~(c) Compliance with 450:18-7-3 may be determined by a review of the following:~~

~~(1) Facility policy and procedures;~~

~~(2) Facility forms;~~

~~(3) Consumer record reviews;~~

~~(4) Interviews with staff and consumers; and~~

~~(5) Any other supporting facility documentation.~~

450:18-7-3.1. 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:

(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) A written consent from a consumer to release treatment information to persons within the criminal justice system which have mandated the consumer's participation in treatment as a condition of the disposition of any criminal proceeding against the consumer shall comply with all applicable state and federal laws and contain 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 authorized representative;
(7) the date the consent to release was signed by the consumer or the consumer's authorized representative;
(8) 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);
(9) a specific time or specific event upon which the consent will expire and during which the consent shall be irrevocable, which in no event may be later than the final disposition of the criminal proceeding; and
(10) a statement that any disclosure made is bound by the federal law and regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 U.S.C. § 290dd-2; 42 C.F.R., Part 2) and that recipients of the information may receive and redisclose it only in connection with their official duties with respect to the particular criminal proceeding and may not be used in other proceedings, for other purposes, or with respect to other individuals.

(e) Compliance with 450:18-7-3.1 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.

PART 7. CASE MANAGEMENT

450:18-7-63. Case management services, staff credentials

Individuals providing case management services shall be certified as a behavioral health case manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50.

PART 15. OTHER CASE RECORD MATERIALS

450:18-7-143. Records and reports from other entities

(a) The consumer record shall contain any additional information relating to the consumer, which has been secured from sources outside the approved treatment facility. The information obtained shall be confidential and privileged and may not be released except as allowed by applicable state and federal laws.
(b) Compliance with 450:18-7-143 may be determined by a review of policy and procedures; consumer records; progress notes; interviews with staff; and other facility documentation

SUBCHAPTER 11. CONSUMER RIGHTS

450:18-11-1. Consumer rights, inpatient and residential type services

~~(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. The orders and rules of either the Department of Corrections, or an Oklahoma Drug Court, or Oklahoma District Court, or Federal Court, or Federal Probation System take precedence. However, the treatment provider shall continue to maintain a therapeutic environment to the fullest extent possible.~~ Each approved treatment 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, detoxification programs, residential care homes, halfway houses, 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.]~~ shall comply with applicable rules in Title 450, Chapter 15. Consumer Rights.

~~(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 treatment 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.~~

~~(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 ward, 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 aforestated 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 consumer right stated in this section.~~

~~(c) Each affected facility 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 450:18-11-1 may 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.~~

450:18-11-2. Consumer rights, outpatient services

~~(a) All consumers receiving~~ Approved treatment facilities providing outpatient services shall comply with applicable rules in Title 450, Chapter 15. Consumer Rights ~~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. The orders and rules of either the Department of Corrections, or an Oklahoma Drug Court, or Oklahoma District Court, or Federal Court, or Federal Probation System take precedence. However, the treatment provider shall continue to maintain a therapeutic environment to the fullest extent possible. Each facility either operated by, or certified by, or under contract with ODMHSAS providing outpatient mental health or substance abuse services shall insure consumers have the rights specified as follows. For purposes of this section, outpatient services includes all services where the consumer does not reside in, or stay overnight in, the facility providing services to him or her.~~

~~(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) Each consumer has the right to receive services in a safe, sanitary, and humane living environment.~~

~~(3) Each consumer has the right to receive services in a humane psychological environment protecting them from harm, abuse, and neglect.~~

~~(4) Each consumer has the right to receive services in an environment which provides privacy, promotes personal dignity, and provides opportunity for the consumer to improve his or her functioning.~~

~~(5) Each consumer has the right to receive services 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) No consumer shall ever be neglected or sexually, physically, verbally, or otherwise abused.~~

~~(7) Each consumer has the right to be provided with prompt, competent, appropriate treatment services and an individualized treatment plan.~~

~~(A) The consumer shall be afforded the opportunity to participate in his or her treatment and treatment planning; and may consent, or refuse to consent, to the proposed treatment.~~

~~(B) The consumer's right to consent, or refuse to consent, may be abridged for those consumers adjudged incapacitated by a court of competent jurisdiction, and in emergency situations defined by law.~~

~~(C) When the consumer permits, the consumer's family or significant others shall be involved in the treatment and treatment planning.~~

~~(8) The records of each consumer shall be treated in a confidential manner.~~

~~(9) 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.~~

~~(10) A consumer may voluntarily participate in work therapy, and shall be paid just compensation for such work.~~

~~(11) 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.~~

~~(12) 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.~~

~~(13) 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 aforestated 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 consumer right stated in this section.~~

~~(c) Each affected facility 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 450:18-11-2 may be determined by a review of facility policy and procedures; posted notices of consumer rights (outpatient services); interviews with staff and consumers; review of grievances by consumers or others; and any other supporting facility documentation.~~

450:18-11-3. Consumer's grievance policy

~~(a)~~ Each approved treatment facility shall ~~have a written Grievance Policy providing for, but not limited to, the following:~~ comply with applicable rules in Title 450, Chapter 15. Consumer Rights.

~~(1) Written notice of the procedure provided to the consumer and, if involved with the consumer, to family members or significant others.~~

~~(2) Time frames for the grievance policy's procedures which allow for resolution within 72 hours, excluding weekends and holidays.~~

~~(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy.~~

~~(4) Procedure by which 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 450:18-11-3 may be determined by:~~

~~(1) a review of the grievance policy and implementing procedures;~~

~~(2) posted notices of consumer rights;~~

~~(3) interviews with staff and consumers;~~

~~(4) review of the facility's records of grievances filed by consumers or family and significant others; and~~

~~(5) any other supporting facility documentation.~~

[OAR Docket #04-870; filed 5-7-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 19. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

[OAR Docket #04-871]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Client Rights
450:19-11-1. [AMENDED]
450:19-11-2. [AMENDED]
450:19-11-3. [AMENDED]
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N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 19 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, enhance programs for individuals receiving domestic violence or sexual assault services by organizations certified by or under contract with ODMHSAS, 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, 2004:

SUBCHAPTER 11. CLIENT RIGHTS

450:19-11-1. Client rights, shelter and residential services

(a) All ~~clients of~~ DV/SA shelters and ~~residential~~ transitional living services 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. Specific client rights shall be visibly posted, and are listed below:~~ comply with the applicable rules in Title 450, Chapter 15. Consumer Rights.

~~(1) All clients 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 clients have the right to a safe, sanitary, and humane living environment.~~

~~(3) All clients have the right to a humane psychological environment protecting them from harm, abuse, and neglect.~~

~~(4) Each client has the right to an environment which provides reasonable privacy, promotes personal dignity, and provides opportunity for the client to improve her or his functioning.~~

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

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

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

~~(8) Each client has the right to uncensored, private communications including, but not limited to, letters and telephone calls. Copies of any personal letter, sent or received, by a client shall not be kept in her or his client record without the written consent of the client.~~

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

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

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

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

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

~~(12) The records of each client shall be treated as confidential.~~

~~(13) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal~~

~~to participate shall not affect the services available to the client.~~

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

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

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

~~(b) Programs shall have written policy and procedures, and shall provide documented staff training to insure the implementation of each and every client right stated in this section.~~

~~(c) Programs shall have written policy and procedures to insure each client enjoys, and has explained to her/him, these rights; and these rights are visibly posted in both client and public areas of the facility.~~

~~(d) The ODMHSAS Office of Consumer Advocacy, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff as set forth in OAC Title 450, Chapter 15, Consumer Rights.~~

~~(e) Compliance with 450:19-11-1 shall be determined by a review of program policy and procedures; posted notices of client rights; interviews with staff and clients; review of grievances by clients or others; and any other supporting program documentation.~~

450:19-11-2. Client rights, non-shelter residential services

(a) All ~~clients receiving~~ DV/SA programs providing batterer's intervention, sexual assault or other outpatient services 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. Specific client rights shall be visibly posted, and are listed below:~~ comply with the applicable rules in Title 450, Chapter 15. Consumer Rights.

~~(1) All clients 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) Each client has the right to receive services in a safe, sanitary, and humane living environment.~~

~~(3) Each client has the right to receive services in a humane psychological environment protecting them from harm, abuse, and neglect.~~

~~(4) Each client has the right to receive services in an environment which provides privacy, promotes personal dignity, and provides opportunity for the client to improve her or his functioning.~~

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

~~(6) No client shall ever be neglected or sexually, physically, verbally, or otherwise abused.~~

~~(7) Each client has the right to be provided with prompt, competent, appropriate services and an individualized service plan.~~

~~(A) The client shall be afforded the opportunity to participate in her or his services and service planning; and may consent, or refuse to consent, to the proposed services.~~

~~(B) When the client permits, the client's family or significant others shall be involved in the treatment and treatment planning.~~

~~(8) The records of each client shall be treated as confidential.~~

~~(9) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal to participate shall not affect the services available to the client.~~

~~(10) Each client has the right to assert grievances with respect to any alleged infringement of these stated rights of clients, or any other subsequently statutorily granted rights.~~

~~(11) No client shall ever be retaliated against, or subject to, any adverse conditions or services solely or partially because of having asserted her or his rights as stated in this section.~~

~~(12) Clients may review their records, or authorize their attorney or others to do so. However, where the program is providing the treatment of a mental health or substance abuse illness, the provisions of 43A O.S. § 1-109 and 42 CFR apply. Clients also have the right that all information and records regarding them shall be treated as confidential.~~

~~(b) Programs shall have written policy and procedures, and shall provide documented staff training to insure the implementation of each and every client right stated in this section.~~

~~(c) Programs shall have written policy and procedures to insure each client enjoys, and has explained to her or him, these rights; and these rights are visibly posted in both client and public areas of the facility.~~

~~(d) The ODMHSAS Office of Consumer Advocacy, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff as set forth in OAC Title 450, Chapter 15, Consumer Rights.~~

~~(e) Compliance with 450:19-11-2shall be determined by a review of program policy and procedures; posted notices of client rights (outpatient services); interviews with staff and clients; review of grievances by clients or others; and any other supporting program documentation.~~

450:19-11-3. Client's grievance policy

(a) Each DV/SA program shall ~~have a written Client's Grievance Policy providing for, but not limited to, the following:~~ comply with the applicable rules in Title 450, Chapter 15. Consumer Rights.

~~(1) Written notice of the grievance and appeal procedure provided to the resident or guardian; and, if involved with the client, to family members or significant others.~~

~~(2) Time frames for the grievance policy's procedures which allow for an initial response to the client within five (5) days of receipt and resolution within 30 days.~~

~~(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authority to make decision(s) for resolution of the grievance and the individual responsible for or authorized to make decisions for resolution of grievance. In the instance where the decision maker is the subject of a grievance, decision making authority shall be delegated.~~

~~(4) Provide for notice to the resident that he or she has a right to make a complaint to the ODMHSAS Consumer Advocacy Division.~~

~~(5) Mechanism to monitor the grievance process and improve performance based on outcomes.~~

~~(6) Annual review of the grievance policy and procedures, with revisions as needed.~~

~~(b) Compliance with 450:19-11-3 shall be determined by:~~

~~(1) a review of the program's grievance policy procedures;~~

~~(2) posted notices of client rights;~~

~~(3) interviews with staff and clients;~~

~~(4) review of the program's records of filed grievances; and~~

~~(5) any other supporting program documentation.~~

[OAR Docket #04-871; filed 5-7-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 21. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND ~~INSTRUCTORS~~ FACILITATORS

[OAR Docket #04-872]

RULEMAKING ACTION:
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RULES:
Subchapter 1. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and ~~Instructors~~Facilitators
450:21-1-1. [AMENDED]
450:21-1-2. [AMENDED]
450:21-1-3. [AMENDED]
450:21-1-5. [AMENDED]
450:21-1-6. [AMENDED]
450:21-1-7. [AMENDED]
450:21-1-7.2. [AMENDED]
450:21-1-8. [AMENDED]
450:21-1-10. [AMENDED]
450:21-1-11. [AMENDED]
450:21-1-13. [AMENDED]
450:21-1-14. [AMENDED]
Subchapter 3. Certification Denial or Sanctions
450:21-3-1. [AMENDED]
450:21-3-2. [AMENDED]
450:21-3-3. [AMENDED]
Subchapter 5. Course Attendance and Completion
450:21-5-1. [AMENDED]
450:21-5-2. [AMENDED]

AUTHORITY:
Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-451 through 3-460; 47 O.S. §§ 6-212.2 and 11-902; 22 O.S. § 991c.

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450:21-1-6. [AMENDED]
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N/A

ANALYSIS:
In compliance with the Administrative Procedures Act the proposed rule revisions to Chapter 21 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, amendment or repeal of rules, 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, 2004:

SUBCHAPTER 1. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND ~~INSTRUCTORS~~ FACILITATORS

450:21-1-1. Purpose

This chapter sets forth the standards and criteria used in the certification of Alcohol and Drug Substance Abuse courses and ~~instructors~~ facilitators and implements 43A O.S. §§ 3-451 through 3-460.

450:21-1-2. Statutory authority

(a) Under 43A O.S. § 3-453(D), ODMHSAS has authority to certify Alcohol and Drug Substance Abuse Courses. Pursuant to 47 O. S. § 6-212.2, persons convicted of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or other drug related revocation or suspension of driving privileges must complete an Alcohol and Drug Substance Abuse Course as a requirement for reinstatement of Oklahoma driving privileges.

(b) Pursuant to 43A O. S. §§ 3-453, ODMHSAS is authorized to adopt rules governing:

(1) Applications and certification of organizations and institutions to conduct ADSAC ~~courses~~;

(2) Denial, suspension or revocation of certification;

(3) Minimum requirements for all ADSAC content and curricula;

(4) Minimum qualifications for all ADSAC ~~instructors~~ facilitators;

(5) Enrollment fees for those attending ADSAC;

(6) Facilities, equipment and instructional materials for ADSAC;

(7) Minimum qualifications for ~~instructors~~ facilitators of ADSAC ~~instructor~~ facilitator training;

(8) ADSAC student attendance requirements; and

(9) Requirements for certifying to ODMHSAS and DPS successful course completion of ADSAC by a person.

450:21-1-3. Definitions

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

"ADSAC" means Alcohol and Drug Substance Abuse Course.

"10 Hour ADSAC ~~Instructor~~ Facilitator" means an individual certified to teach the ten (10) hour ADSAC ~~Course~~.

"24 Hour ADSAC ~~Instructor~~ Facilitator" means an individual certified to teach the twenty-four (24) hour ADSAC ~~Course~~.

"Administrator" means the person responsible for administering ADSAC within a certified organization or institution.

"Action Code" means a numerical designation applied to ADSAC ~~Courses~~ by the Oklahoma Department of Public Safety, and which will be provided by ODMHSAS to organizations and institutions conducting ADSAC, for use in completing the written verification of an individual's completion of an ADSAC ~~course~~.

"Certification" means organization, institution or ~~instructor approval~~ individual approved by ODMHSAS to conduct ADSAC.

"Commissioner" means the Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services.

"Conflict of interest" means a conflict between the private interests and public obligations of a certified organization, institution, or certified ADSAC Instructor and includes instructors being involved in a business relationship with more than one (1) ADSAC provider organization.

"Consumer" means an individual, adult or child, who is receiving services, evaluation or treatment, from an entity 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.

"Course" means multiple classes offering an approved ADSAC curriculum.

"Curricula" (plural of Curriculum) See Curriculum.

"Curriculum" means a course of study in alcohol and drug substance abuse.

"Denial" means a refusal to certify to conduct ADSAC.

"DPS" means Department of Public Safety.

"Equipment" means hardware, such as audio visual equipment, used as a tool to present material in an ADSAC ~~course~~.

"Facilitator candidate" means an individual who has applied to be certified to conduct ADSAC, as either a 10 hour or 24 hour ADSAC Facilitator.

"Facility" means building in which ADSAC is conducted.

"Guest instructor" means non-certified ~~instructor~~ individual invited to discuss a specific portion of ADSAC curriculum.

"Instructional material" means written or printed data distributed to the student during the normal course of an ADSAC schedule, for informational or educational purposes.

"Intern ~~instructor~~ facilitator" means a facilitator who has initial approval to conduct ADSAC, ~~(~~either 10 Hour or 24 Hour~~)~~, but who has not completed internship or training requirements~~;~~, and is not certified.

~~**"Instructor candidate"** means an individual who has applied to be certified to instruct ADSAC, as either a 10 hour or 24 hour ADSAC Instructor.~~

"Lapse" means the expiration of an otherwise valid ADSAC certification due to the failure to timely complete and submit the required application for recertification.

~~**"Intern instructor"** means an instructor a facilitator who has initial approval to conduct ADSAC, (either 10 Hour or 24 Hour), but who has not completed internship or training requirements;, and is not certified.~~

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Offender" means a person convicted of driving under the influence of alcohol or other intoxicating substances or

receiving an alcohol or drug related revocation or suspension of driving privileges.

"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.

"Recertification" means the renewal of certification for an institution, or organization, or instructor to provide ADSAC.

"Revocation" means cancellation of an existing certification to conduct or instruct ADSAC.

"Student" means an individual who pays an enrollment fee to attend ADSAC.

"Suspend" means to temporarily cancel certified ADSAC services for a designated period.

"Transtheoretical Model of Change" or **"TMC"** means a model which identifies distinct stages of change existing for each individual involved in any educational or therapeutic process and enhances the ability to accurately assess the individual's readiness for clinical or educational engagement at the time of an assessment. This is also referred to as the "Stages of Change" model.

450:21-1-5. Compliance with laws, rules

(a) All organizations or institutions and ~~instructors~~ facilitators certified by ODMHSAS to conduct ADSAC shall do so in accordance with all applicable laws of the State of Oklahoma and all applicable rules (OAC Title 450) of ODMHSAS.

(b) Each applicant shall declare that he or she has read and understands §§ 3-451 through 3-460 of Title 43A of the Oklahoma Statutes and this chapter and agrees to abide by the terms thereof, along with future amendments thereto, as a condition for obtaining and retaining such approval or certification.

(c) ODMHSAS shall process all applications, and enforce these standards and criteria (rules) in this chapter, and related laws.

(d) Approved organizations, institutions~~,~~ and ~~instructors~~ facilitators shall not ~~make reference~~ make reference to ODMHSAS or DPS in any advertisement. Advertising shall be truthful in all communication with prospective students. Implication of exclusive services by any one organization is prohibited.

(e) All organizations, institutions and ~~instructors~~ facilitators certified to conduct ADSAC must promptly notify ODMHSAS of a change of mailing or physical address within fourteen (14) days of said change.

(f) The fees for those attending ten (10) hour ADSAC ~~ten (10) hour courses~~ shall be ~~eighty-five dollars ($85.00)~~ one hundred and fifty dollars ($150.00) per student; and for persons attending the twenty-four (24) hour courses the fee shall be ~~two hundred fifty dollars ($250.00)~~ three hundred and sixty dollars ($360.00).

(g) The ADSAC organization or institution shall pay ODMHSAS ten percent (10%) of each ADSAC fee collected, which ODMHSAS shall remit to the Oklahoma State Treasurer to be credited to the ODMHSAS Revolving Fund.

450:21-1-6. Applications

(a) Applications for certification of organizations or institutions and ~~instructors~~ facilitators to conduct 10 hour or 24 hour ADSAC ~~courses~~ shall be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS.

(b) ODMHSAS shall give each organization, institution and ~~instructor~~ facilitator candidate requesting certification to conduct 10 hour or 24 hour ADSAC ~~courses~~ the following:

(1) A copy of §§ 3-451 through 3-453 of Title 43A of the Oklahoma Statutes;

(2) A copy of these standards and criteria; and

(3) The appropriate application(s)~~; and~~.

~~(4) A sample of the standardized ADSAC curriculum approved by ODMHSAS.~~

(c) An organization or institution applying for certification to conduct ADSAC shall provide to ODMHSAS for consideration:

(1) Completed application;

(2) Film approval form(s) for the 10 or 24 Hour ADSAC ~~Courses~~;

(3) Instructional materials for the 10 or 24 Hour ADSAC ~~Courses~~;

(4) Written verification the applicant is a nonprofit educational institution of higher learning, a governmental entity or a nonprofit corporation. If a non-profit corporation, verification shall be a copy of the U.S. Internal Revenue Service Documents granting the corporation 501(c)(3) status;

(5) Completed certification applications and resumes of proposed ~~instructors~~ facilitators;

(6) The physical address (street, building name and suite [if applicable], city and zip code) and description of all sites at which ~~ADSACs~~ the ADSAC will be conducted;

(7) Letters of support from at least two (2) of the following (and who serve the location in which each proposed site is located):

(A) District or Associate District Judge~~,~~;

(B) County Sheriff~~,~~;

(C) Municipal Judge~~,~~; ~~or~~

(D) District or Assistant District Attorney~~,~~; or

(E) Community ~~leaders~~ leader.

(d) If the applicant is a non-profit corporation, the applicant shall submit evidence it was constituted, and is operated, to provide substance abuse, mental health or educational services as its primary services and that the corporation is operated from a professional administrative office, which is open and operated during normal business hours.

(e) Requests from a certified ADSAC ~~providers~~ provider for additional or replacement course sites shall be submitted to the ODMHSAS and shall meet all requirements for initial applications except it need not submit items previously submitted and are currently applicable to the new site(s) and expressly stated as such in the application for new course site(s).

(f) Renewal of certification of ADSAC organizations or institutions shall be contingent upon submission of renewal application and programmatic history of compliance. The

application for renewal shall include all items required for initial certification.

(g) An applicant for certification as ~~an instructor~~ a facilitator to conduct ADSAC shall provide to ODMHSAS for consideration:

(1) A letter of recommendation from an administrator of a certified organization or institution;

(2) A current resume, which shall include:

(A) Education background including an official college transcript, and

(B) Employment history covering the previous ten (10) years to include name, complete address and telephone number of employer(s).

(3) A completed application; and

(4) A completed Oklahoma State Bureau of Investigation background check and a similar background check from any other state(s) of residence for the past three (3) years.

(5) Remission of a one hundred dollar ($100.00) fee for initial certification.

(h) ~~Each~~ ODMHSAS shall consider each applicant ~~shall be considered~~ for certification ~~by ODMHSAS~~ in accordance with these standards and criteria. ~~and~~ The Commissioner of Mental Health and Substance Abuse Services shall ~~be notified~~ notify each applicant in writing of an approval or denial of certification ~~in writing by the Commissioner of Mental Health and Substance Abuse Services~~. Certification shall be effective for three (3) years (~~thirty-six (~~36~~)~~ months) commencing with the date of issue.

450:21-1-7. Minimum curriculum requirements, ten (10) hour courses

(a) The standardized ADSAC curriculum approved by ODMHSAS shall be utilized by all ADSAC organizations, institutions and ~~instructors~~ facilitators for the ten (10) hour ADSAC ~~course~~. Any additional materials must be consistent with the format of the main curricula and follow the transtheoretical model of change.

(b) The ten (10) hour Alcohol and Drug Substance Abuse Course shall at a minimum include instruction on:

(1) Legal aspects of drinking or using other drugs and driving;

(2) Physiological aspects of using alcohol and other drugs;

(3) Sociological aspects of using alcohol and other drugs;

(4) Effects and possible outcomes of drinking or using other drugs and driving,

(5) Scope of the problem of drinking or using other drugs and driving,

(6) The history/origins of alcohol and other drugs;

(7) The effects on family and friends in the abuse of alcohol and other drugs

(8) Alternative plans/strategies to using alcohol or other drugs and driving, and

(c) Each curriculum shall provide for a full ten (10) hours of block-teaching classroom instruction, and shall be conducted in no ~~less~~ fewer than ~~two (2)~~ three (3) sessions with each session no more than three and one half (3.5) hours in duration, and conducted on no fewer than three (3) ~~two (2)~~ separate days. These hours shall not be inclusive of:

(1) Meal or break times; or

(2) ADSAC administrative functions except for enrollment form completion and fee payment.

(d) Students may be admitted for fifteen (15) minutes after the official starting time of the class without having to make up this time.

(e) Each curriculum shall provide for a discussion period following each audio-visual presentation. Audio-visual materials shall not comprise more than ten (10) percent of the class and must have been submitted and approved at the time of application for certification.

(f) Each ten (10) hour curriculum shall provide for a pre- and post-test. The Pre-test shall be given during the first two (2) hours of the beginning of each course, and the Post-test at the end of each course. The purpose is to determine student gain in knowledge of the material.

(g) The ADSAC organization, institution or ~~instructor~~ facilitator shall provide each student a list of community referrals and resources provided by ODMHSAS.

(h) Class size shall not exceed ~~twelve (12)~~ twenty-four (24) students.

450:21-1-7.2. Minimum curriculum requirements, twenty-four (24) hour courses

(a) The standardized ADSAC curriculum approved by ODMHSAS shall be utilized by all ADSAC organizations, institutions and ~~instructors~~ facilitators for the twenty-four (24) hour ADSAC ~~course~~. Any additional materials must be consistent with the format of the main curricula and follow the transtheoretical model of change.

(b) The minimum curriculum requirements for the twenty-four (24) hour ADSAC ~~course~~ for second and subsequent offenders includes but is not limited to appropriate instruction on:

(1) Legal aspects of drinking or using other drugs and driving;

(2) Physiological aspects of using alcohol and other drugs;

(3) Sociological aspects of using alcohol and other drugs;

(4) Effects and possible outcomes of drinking or using other drugs and driving;

(5) Scope of the problem of drinking or using other drugs and driving;

(6) The history/origins of alcohol and other drug abuse;

(7) Alternatives to using alcohol or other drugs and driving; and

(8) The effects on family and friends in the abuse of alcohol and other drugs.

(c) The curriculum shall be covered within the following time-frames:

(1) Not more than two (2) hours of education on a single day.

(2) Not more than four (4) hours of education in a single week.

(3) The time-frames shall not be inclusive of:

(A) Meal or break times; or

(B) ADSAC administrative functions except for enrollment form completion and fee payment.

(4) Students may be admitted up to fifteen (15) minutes after the official time of the class without having to make up the time.

(d) The curriculum shall provide for a discussion period following each audiovisual presentation. Audiovisual presentation shall not be used for more than ten (10) percent of the total class time.

(e) The curriculum shall provide for a Pre- and Post-test, as prescribed by ODMHSAS. The Pre-test shall be given in the first two (2) hour block of classroom ~~instruction~~ facilitation, and the Post-test shall be given at the end of the final block of classroom ~~instruction~~ facilitation. These tests are to determine the student knowledge gain of the material.

(f) Each student shall be given community referrals and resources as appropriate.

(g) Class size shall not exceed ~~twelve (12)~~ twenty-four (24) students.

450:21-1-8. Administrative responsibilities, institutions or organizations conducting ADSAC

(a) Each organization or institution certified to conduct ADSAC shall provide ODMHSAS a monthly schedule of courses to be conducted. The scheduled courses shall be provided per the submitted course schedule and the course may only be canceled if zero (0) students show up for the course within fifteen (15) minutes after the scheduled course starting time. The ~~monthly~~ course schedule shall be submitted no later than thirty (30) days in advance of any course start and shall include;

(1) The complete address, street, building name and suite where applicable, city and zip code, where each course will be conducted;

(2) The course ~~instructor~~ facilitator;

(3) The beginning and ending times of each session of the course; and

(4) Enrollment in ten or twenty-four hour classes shall be limited to ~~twelve (12)~~ twenty-four (24) students.

(b) Each organization or institution certified to conduct ADSAC shall advise ODMHSAS seven (7) days in advance of:

(1) A 10 Hour or 24 Hour Course cancellation; or

(2) A scheduled ~~instructor~~ facilitator change (unless change is due to illness or other instructor emergency); or

(3) Any change of the date or hour of the scheduled 10 Hour or 24 Hour Course.

(c) Failure to offer either a 10 Hour or 24 Hour Course at an approved site for three (3) consecutive months shall constitute a withdrawal from that site and require another application for certification.

(d) If no students attend the first session of a ten (10) or twenty-four (24) hour course, a second or subsequent session is not required.

(e) Failure to either provide a scheduled course to one (1) or more attending students, or staff a scheduled course site for up to fifteen (15) minutes after the scheduled course beginning time may result in administrative reprimand, suspension or revocation. Class may be cancelled when zero (0) students show up after fifteen (15) minutes of the scheduled course beginning time.

(f) ODMHSAS personnel shall be admitted to any course without charge, upon request and display of proper credentials for the purpose of audit and review.

450:21-1-10. ~~Instructor~~ Ten or 24 hour facilitator certification, qualification and disqualification

(a) Minimum qualifications for certification of 10 Hour ADSAC ~~instructors~~ facilitators are as follows:

(1) Possess a bachelor's degree in behavioral or health-care sciences education, psychology, social work or chemical dependency with at least two (2) years verifiable full-time equivalent experience in the addiction treatment field.

(2) A valid driver's license.

(3) Completion of the following in the order listed below:

(A) Observe one (1) complete ADSAC ~~course~~ conducted by a certified ~~instructor~~ facilitator. This observation must be completed and verified to ODMHSAS prior to attending ~~instructor~~ facilitator training~~.~~;

(B) Instructor training and pass the ODMHSAS Certification Examination for 10 Hour ADSAC ~~Instructor~~ Facilitator~~,~~; and

(C) Conduct a complete ADSAC ~~course~~ under the supervision of a certified ADSAC ~~instructor~~ facilitator or an ODMHSAS representative.

(4) The ~~instructor~~ facilitator candidate shall be allowed one (1) year to complete all training requirements. Failure to meet all requirements within one (1) year will result in denial of certification. To be reconsidered, the candidate will be required to re-apply to ODMHSAS.

(~~6~~5) ~~Continued certification of each~~ Renewal of certification as a 10 Hour ADSAC ~~Course Instructor~~ Facilitator shall be dependent upon renewal application, remission of a twenty-five dollar ($25.00) renewal certification fee, and the accomplishment of minimum standards. These standards are:

(A) Each ~~instructor~~ facilitator shall conduct at least two (2) complete courses during each twelve (12) month period beginning with the date of initial certification.

(B) Documentation of receiving ten (10) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas:

(i) adult education,

(ii) social work, sociology or psychology, and

(iii) ~~alcohol/drug~~ alcohol and other drug training.

(b) An applicant for Certified ~~Instructor~~ Facilitator for the twenty-four (24) hour ADSAC ~~Course~~ shall meet the following qualifications:

(1) Be a Qualified Practitioner as set forth in OAC 450:22-1-13 and certified as a 10 Hour ADSAC Instructor (in good standing) for at least one (1) year~~, or be a Certified 10 Hour ADSAC Instructor for at least three (3) years~~;

(2) Observe at least six (6) hours of a 24 Hour ADSAC Course; ~~and~~

(3) Present at least six (6) hours of a 24 Hour ADSAC under the observation of a certified 24 Hour ADSAC ~~Instructor~~ Facilitator, and receive written recommendation for certification from said observer~~.~~; and

(4) Attend six hours of ODMHSAS 24 Hour ADSAC Facilitator training.

(~~d~~c) ~~Continued~~ Renewal for certification ~~of each~~ as a 24 Hour ADSAC ~~Course Instructor~~ Facilitator shall be dependent upon application for recertification, remission of a twenty-five dollar ($25.00) renewal certification fee, and the accomplishment of the following:

(1) Each ~~instructor~~ facilitator shall conduct at least two (2) complete courses during each twelve (12) month period beginning with the initial certification.

(2) Documentation of receiving ten (10) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas:

(A) education,

(B) social work, psychology or sociology, and

(C) alcohol/drug training.

(~~e~~d) An applicant may not be certified nor certification as an ADSAC ~~instructor~~ facilitator renewed under any of the following conditions:

(1) A non-pardoned felony conviction within the last five (5) years;

(2) Conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges for five (5) years prior to the application for certification; or,

(3) Having involvement in any business or endeavor which is a conflict of interest. ODMHSAS may on its own initiative, or upon complaint, investigate potential or alleged conflict of interest, or any other alleged, or suspected violation of these standards.

450:21-1-11. ~~Instructor~~ Facilitator training

(a) Minimum qualifications for organizations or institutions conducting ADSAC ~~Instructor~~ Facilitator training, and the minimum qualifications for individuals conducting instructor training are as follows:

(1) All ADSAC ~~Instructor~~ Facilitator training shall only be conducted by non-profit organizations, educational institutions or governmental agencies.

(2) The Curricula for the training shall be as follows:

(A) A minimum of twenty-four (24) hours of instruction. These hours shall be offered in no less than four (4) days and for no more than eight (8) hours per day.

(3) Teachers for ~~instructor~~ facilitator training must have:

(A) A minimum of two (2) years experience as an ADSAC ~~instructor~~ facilitator; or

(B) A masters degree from an accredited college or university; or

(C) Four (4) years related experience in the subject matter to be taught.

(4) Each facility where ~~instructor~~ facilitator training courses are conducted shall:

(A) Meet local and state fire and safety standards; and

(B) Provide a safe and comfortable environment for ~~instructors~~ facilitators and facilitator ~~instructor~~ candidates.

(5) Instructional equipment must be in good working order.

(6) ~~Instructor~~ Facilitator Training organizations or institutions shall notify potential students, in writing, that ~~instructor~~ facilitator training received prior to written application to ODMHSAS shall not be accepted for ~~Instructor~~ Facilitator Certification requirements.

(7) Each organization or institution shall advise ODMHSAS in writing the names of candidates who did not complete training and the names of persons have successfully completed the ~~instructor~~ facilitator training ~~on a form prescribed by ODMHSAS~~.

450:21-1-13. Consumers with disabilities ~~Disabled consumers~~

Each organization providing ADSAC shall have a written policy addressing its awareness of, and intent to comply with, the (U.S.) Americans with Disabilities Act of 1990.

450:21-1-14. State and federal statutes and regulations

All organizations and ~~instructors~~ facilitators shall comply with all applicable federal and state statutes and regulations.

SUBCHAPTER 3. CERTIFICATION DENIAL OR SANCTIONS

450:21-3-1. Administrative denial, suspension, or revocation of certification

(a) ODMHSAS may deny the certification of any organization, institution, or ~~instructor~~ facilitator (10 Hour or 24 Hour) to conduct ADSAC who fails to qualify for, or comply with, the provisions of this chapter.

(b) ODMHSAS may reprimand, suspend, revoke or deny renewal of the certification of any organization, institution, or ~~instructor~~ facilitator (10 Hour or 24 Hour) who fails to qualify for or comply with the provisions of this chapter.

(c) In the event ODMHSAS determines action should be taken against any person certified under this Chapter, the proceeding shall be initiated pursuant to the rules of ODMHSAS

as set forth in Oklahoma Administrative Code, Title 450, Chapter 1, Subchapter 5 and the Administrative Procedures Act.

(d) Organizations or institutions or ~~instructors~~ facilitators, 10 Hour or 24 Hour, who have had certification renewal denied or revoked, shall be ineligible for reapplication for a period of five (5) years.

(e) Organizations, institutions or individuals whose certification has expired may apply for initial certification.

450:21-3-2. Grounds for reprimand, suspension or revocation of certification, organizations and institutions~~, and instructors~~ facilitators

(a) Administrative sanctions may be taken against an organization or institution certified to conduct ADSAC for any of the following reasons:

(1) Erroneous or false information supplied in any part of the application for certification;

(2) Allowing more than ~~twelve (12)~~ twenty-four (24) students in any one 10 Hour or 24 Hour course;

(3) Tardiness or failure to make reports, or to transmit funds required by this chapter;

(4) Erroneous or falsified information relating to any documents submitted to ODMHSAS;

(5) Conflict of interest by the organization or institution or its personnel;

(6) Allowing a non-certified, non-approved, or intern ~~instructor~~ facilitator to conduct ~~and~~ an ADSAC ~~course~~ without a certified ADSAC ~~instructor~~ facilitator (10 Hour or 24 Hour, as required by the ADSAC ~~course~~ being given) present;

(7) Failure to maintain all records required by ODMHSAS;

(8) Using facilities not approved by ODMHSAS;

(9) Knowingly permitting any 10 Hour or 24 Hour ADSAC ~~instructor~~ facilitator to violate any rule of this Chapter, or any other relevant Chapter of these Administrative Rules;

(10) Use of unapproved curriculum or instructional material not pre-approved by ODMHSAS;

(11) Use of inappropriate materials/equipment or materials/equipment in poor repair;

(12) Failure to provide at least two (2) complete 10 Hour courses within twelve (12) months;

(13) Failure to provide certified ~~instructors~~ facilitators for courses;

(14) Beginning a course prior to the scheduled time;

(15) Failure to wait at least a full fifteen (15) minutes when zero (0) students are present at the scheduled beginning time for a course;

(16) Failure to provide the complete course for any students arriving within fifteen (15) minutes;

(17) Failure to provide ODMHSAS with a class schedule at least thirty (30) days in advance of presentation;

(18) Failure to provide ODMHSAS class schedule changes at least seven (7) days in advance of presentation except when ~~instructor~~ facilitator changes are due to illness or other emergency;

(19) Failure to complete ODMHSAS requirements for adding class sites;

(20) Failure to notify ODMHSAS of any ~~instructor~~ facilitator violations of this chapter, or of ~~instructor~~ facilitator terminations due to violations of this chapter;

(21) Establishing the legal business residence of the institution or organization outside the State of Oklahoma;

(22) Issuance of completion certificates to students who fail to complete the full ten (10) hours of instruction for first offenders or the full twenty-four hours of instruction for second and subsequent offenders or who fail to meet any other course requirement;

(23) Violation of, or failure to meet, any other applicable standard contained in this chapter;

(24) Knowingly allowing an ADSAC ~~Instructor~~ Facilitator to collect fees for or issue receipts for or issuing completion certificates for or conducting an assessment during or solicit students for assessments, at a later date during the course of an ADSAC.

(25) Refusal to allow ~~an instructor~~ a facilitator candidate to observe an ADSAC ~~when assigned by ODMHSAS~~.

(26) Any other just and verifiable cause including but not limited to unethical or illegal activities.

(b) Administrative sanctions may be taken against ~~an instructor~~ a facilitator certified to conduct 10 Hour or 24 Hour ADSAC for any of the following reasons:

(1) Erroneous or false information contained in the individual's application for certification;

(2) A conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges;

(3) Conviction of any alcohol or other drug related misdemeanor or any felony conviction;

(4) Unlawful conduct on duty or in the presence of students;

(5) Any activity which is a conflict of interest;

(6) Use or abuse of intoxicating beverages or other drugs while teaching an ADSAC ~~course~~;

(7) Permitting a student to attend a course while using or under the influence of any mood-altering substances, including alcohol;

(8) Dismissal by a certified organization or institution for violation of state statutes, or of the standards and criteria in this chapter;

(9) Use of curriculum or instructional material not approved by ODMHSAS;

(10) Willful failure, or refusal, to cooperate with an investigation by ODMHSAS, or employing ADSAC agency, into a potential or alleged violation of applicable rules in this chapter;

(11) Refusal to allow ~~an instructor~~ a facilitator candidate to observe an ADSAC ~~course~~, ~~when assigned by ODMHSAS~~;

(12) Issuance of completion certificate(s) to student(s) who have not completed a full ten (10) hours of instruction ~~for a first offender~~, or who fail to complete the full twenty-four (24) hours of instruction ~~for a second or~~

~~subsequent offender~~, or failure to meet any other ADSAC ~~course~~ requirement;

(13) Violation of any applicable rule in this chapter, or any other applicable chapter;

(14) Falsification of any report, or document submitted, or prepared for submission, to ODMHSAS.

(15) Collecting fees for; or issuing receipts for; or issuing completion certificates for; or conducting an assessment during; or soliciting students for assessments at a later date during the course of an ADSAC.

(16) Any verbal or physical sexual misconduct with or toward a student enrolled in ADSAC.

(17) Failure to provide at least two (2) complete 10 Hour courses within twelve (12) months.

(18) Any other just and verifiable cause including but not limited to unethical or illegal activities.

450:21-3-3. Sanctions and hearings

All sanctions regarding ADSAC organizations, institutions and 10 Hour or 24 Hour ~~instructors~~ facilitators and all administrative hearings and appeals related to such sanctions shall be made and carried out in accordance with Oklahoma Administrative Code, Title 450, Chapter 1, Subchapter 5 and and the Administrative Procedures Act.

SUBCHAPTER 5. COURSE ATTENDANCE AND COMPLETION

450:21-5-1. Student attendance and completion of ADSAC ~~course~~

(a) The ADSAC organization or institution shall require students to complete all portions of an approved curriculum schedule.

(b) The ADSAC shall allow a student unable to attend one (1) or more portions to make up portion or portions missed at another regularly scheduled course at the certified organization or institution at which the course was originally scheduled.

(c) All 10 Hour course work shall be completed within sixty (60) days of the first course. Failure to complete all course work within the sixty (60) days shall result in the loss of course credit. Re-enrollment in either the same or a different ADSAC following failure to complete an ADSAC within the stated time limit shall require full course attendance prior to the issuance of a Certificate of Completion.

(d) All 24 Hour course work shall be completed and paid within one hundred eighty (180) days of the first course. Failure to complete all course work within the one hundred eighty (180) days shall result in the loss of course credit. Re-enrollment in either the same, or a different ADSAC following failure to complete and ADSAC within the state time limit shall require full course attendance prior to the issuance of a Certificate of Completion.

(e) ADSACs shall make required course work available to enrolled students within the times frames set forth in this standard. ADSACs failing to make required course work available within the stipulated time frames, for any reason, shall refund to student any fees paid for said course.

(f) Each organization or institution shall issue a receipt from a pre-numbered duplicate receipt set to each student upon receipt of all or part of the required enrollment fee. Each organization or institution shall have receipts to be used specifically for ADSAC ~~courses~~.

(g) Each organization or institution shall maintain the pre-numbered receipts and a file on both course and student for five (5) years after completion of said course. Such files shall also consist of:

(1) Course information:

(A) Completion roster; and

(B) Attendance records; and

(2) Student information:

(A) Enrollment form~~,~~;

(B) Written referral documenting an assessment pursuant to OAC 450:22-1-11;

(C) Pre- and Post-Test~~,~~;

(D) Evaluation Form completed by student~~,~~; and

(E) Copy of the Completion Certificate.

450:21-5-2. ADSAC reporting of completions

(a) Each certified ADSAC organization or institution shall report successful course completions to ODMHSAS within seven (7) days from the date the course is completed, on a form prescribed by ODMHSAS.

(1) A check for the appropriate fee as provided for in 450:21-1-5 shall accompany the completion roster unless otherwise stipulated, in writing, by ODMHSAS.

(2) Certified organizations or institutions shall not report a completion until all course requirements have been met, to include the student's payment of the full required ADSAC fee.

(b) Each student who successfully completes the course, 10 Hour or 24 Hour, shall be issued ~~a~~ an ODMHSAS certificate of completion by the ADSAC~~. Certificates~~ that shall include the appropriate Action Code as listed below:

(1) 224-10 for persons having completed a 10 Hour course.

(2) 224-24 for persons having completed a 24 Hour course.

[OAR Docket #04-872; filed 5-7-04]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 22. CERTIFICATION OF ALCOHOL AND DRUG ASSESSMENT AND ~~EVALUATION PROGRAMS~~ EVALUATIONS RELATED TO DRIVER'S LICENSE REVOCATION

[OAR Docket #04-873]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
450:22-1-1.1. [AMENDED]
450:22-1-3. [AMENDED]
450:22-1-6. [AMENDED]
450:22-1-8. [AMENDED]
450:22-1-10. [AMENDED]
450:22-1-11. [AMENDED]
450:22-1-15. [AMENDED]
AUTHORITY:
Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-453, and 3-460; 47 O.S. §§ 6-212.2 and 11-902; 22 O.S. §§ 991a and 991c.
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ANALYSIS:
In compliance with the Administrative Procedures Act the proposed rule revisions to Chapter 22 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes; amendment or repeal of rules; 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, 2004:

450:22-1-1.1. Certification duration

(a) ODMHSAS may certify Assessment Agencies for three (3) years.
(b) ODMHSAS may certify ~~Qualified Practitioners and agency~~ assessors for one (1) year.

450:22-1-3. Definitions

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

"Addiction Severity Index" or **"ASI"** is a multidimensional clinical and research instrument that rates the severity of a substance use or abuse problems for diagnostic evaluation and assesses change(s) in treatment status and outcome.

"~~Agency~~ Assessor" means an individual ~~who conducts~~ certified to conduct ADSAC assessments ~~while employed by and under the auspices of an ADSAC agency or organization~~.

"Assessment" means a face-to-face clinical interview evaluating an individual's need and receptivity to substance abuse treatment and his or her prognosis.

~~*"CADC" means Certified Alcoholism and Drug Counselor.*~~

~~**"Catchment area"** 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.~~

"Certification" means ODMHSAS approval for an agency or individual to conduct alcohol and other drug assessments.

"Conflict of Interest" means a conflict between the private interests and public obligations of a certified organization or assessor.

"Consumer" means an individual, adult or child, who has applied for, is receiving, or has received services, evaluation or treatment, from an entity 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.

"Defendant Questionnaire" or **"DQ"** is an automated assessment or screening instrument used in assessing an offender with alcohol or other drug involvement. This instrument contains scales to measure truthfulness, stress coping ability, and severity of alcohol or other drug abuse and classifies an individual as being either a substance abuser or substance dependent using the American Society of Addiction Medicine, patient placement criteria.

"DPS" means the Oklahoma Department of Public Safety.

"Driver Risk Inventory-II" or "DRI-II" is an assessment or screening instrument, which contains six scales measuring truthfulness, driver risk, stress coping ability, and severity of alcohol or other drug abuse and classifies an individual as being either a substance abuser or substance dependent.

~~**"MAC"** means Master Addiction Counselor.~~

"Michigan Alcohol Screening Test" or "MAST" is a widely used tool for assessing alcohol abuse. The MAST is a twenty five (25) item questionnaire designed for use in a paper and pencil form or as an interview. The MAST provides a rapid and effective screen for alcohol related problems and alcoholism. The MAST has been shown to be effective in a variety of settings and with a variety of populations.

"Mortimer-Filkins Questionnaire" or "MFQ" is a fifty four (54) question tool that involves a combination questionnaire and interview used together to calculate a total score. The MFQ was designed to identity problem drinkers among DUI/DWI offenders.

~~**"NCAC"** means National Certified Addiction Counselor.~~

~~**"NAADAC"** means National Association of Alcoholism and Drug Abuse Counselors.~~

"NEEDS" is a one hundred and thirty (130) item comprehensive adult assessment instrument addressing attitude, emotional stability, employment, health, education, substance abuse, relationships, support systems, criminal history and supervision needs. Needs is short for needs assessment.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

~~**"ODPACA"** means Oklahoma Drug and Alcohol Professional Counselor Association.~~

"Offender" means a person convicted of driving under the influence of alcohol or other intoxicating substances or who has received an alcohol or drug- related revocation or suspension of driving privileges.

"Psychosocial History" means an individual and family history of alcohol and drug abuse, an individual and family psychiatric history and a medical history of the individual.

~~**"Qualified practitioner"** means a person with at least a bachelor's degree in substance abuse treatment, mental health or a related health care field, and at least two (2) years experience in providing alcohol treatment, or other drug abuse treatment, or both alcohol and other drug abuse treatment, and who is certified each year by ODMHSAS to provide assessments.~~

"SALCE" or "Substance Abuse Life Circumstances Evaluation" is a ninety eight (98)-item survey addressing alcohol and/or drug use based on DSM-IV and ASAM guidelines. The SALCE also assesses attitude and life stressors. The SALCE is normed to the adult population.

"SASSI" or "Substance Abuse Subtle Screening Inventory" is a brief, easily administered psychological screening tool that assists in the identification of individuals with high probabilities of substance use disorder.

"SUDDS" or "Substance Use Disorders Diagnostic Schedule" is a structured interview consisting of ninety nine (99) items with nine (9) subscales designed to identify relative severity of substance abuse problem in an individual. This instrument exists in both paper and pencil and computer versions.

"TAAD" or "Triage Assessment for Addictive Disorders" is a very brief, structured interview covering current alcohol and drug problems related to DSM-IV criteria for substance abuse and dependency. The TAAD is intended to be presented as an interview and not as a paper and pencil instrument.

450:22-1-6. Driver offender assessors and assessment agencies

(a) Alcohol and other drug assessments shall be provided by individuals or agencies certified by ODMHSAS to provide alcohol and drug assessment and evaluation programs related to driver's license revocation. ODMHSAS certified community mental health centers, ODMHSAS certified alcohol and drug treatment programs, and probation offices shall be considered for such certification.

(b) Certified assessment agencies shall:

(1) Recommend and monitor ~~qualified persons to be~~ certified assessors for compliance to applicable rules within Title 450; and

(2) Provide assessment services only at sites approved by ODMHSAS~~; and~~

~~(3) Assure timely information flow to the Courts, offenders and ODMHSAS~~.

(c) Certified assessors ~~assessment agencies~~ are responsible for:

(1) ~~Providing an appropriate facility, recommending assessors, and~~ Timely reporting assessment data to ODMHSAS;

(2) ~~Utilizing~~ Make recommendations based upon ODMHSAS-required ~~assessment tools and forms for assessment and reporting of assessments~~ assessment instruments;

(3) ~~Monitoring of assessors for appropriate assessment recommendations and conflict of interest~~ Ensure exception findings meet current American Society of Addiction Medicine's (ASAM) over-ride criteria; and

(4) Providing liaison with ODMHSAS, the courts and other agencies.

450:22-1-8. Consumers with disabilities

Each assessment agency or site shall have a written policy addressing its awareness of, and intent to comply with, the U.S. Americans with Disabilities Act of 1990.

450:22-1-10. Offender evaluation

The assessment and evaluation of the offender shall be as comprehensive as possible and shall include, but not be limited to:

(1) A formal face-to-face clinical interview consisting of, at a minimum:

(A) Socio-demographic and background information~~,~~;

(B) Personal history~~,~~; and

(C) A completed and scored Addiction Severity Index (ASI).

(2) The assessor shall obtain and document the offender's driving history information from public record(s), when possible. This information shall minimally include the following:

(A) Arrest date~~,~~;

(B) All charges relating to alcohol and drug offenses~~,~~; and

(C) Driving record;

(3) ~~Alcohol/drug~~ Alcohol and other drug information as supplied by the offender or referring party:

(A) Blood alcohol concentration at time of arrest~~,~~;

(B) Prior alcohol/drug treatment~~,~~;

(C) Polydrug use~~,~~;

(D) Prior alcohol-related arrest(s)~~,~~; and

(E) Prior drug related arrest(s); and

(4) ~~The~~ Pursuant to 450:22-1-11, the use of standardized evaluation instruments.

450:22-1-11. Standardized evaluation instruments

(a) Standardized evaluation instruments shall be administered in the manner intended and be findings shall be a component of the overall assessment and recommendations.

(b) The standardized evaluation instruments shall include:

(1) The Driver Risk Inventory-II (DRI-II) in a face to face structured interview. However, for an offender convicted of a felony or misdemeanor non-driving, alcohol or other drug offense(s), the Defendant Questionnaire (DQ) shall be used instead of the DRI-II and;

(2) A completed and scored Addiction Severity Index (ASI);

(3) A third clinical instrument ~~such as the Mortimer Filkens Court Procedures for Identifying Problem Drinkers~~ to support initial findings, shall be chosen by the assessor from the menu of approved third instruments listed below; ~~and,~~

(A) Substance Abuse Subtle Screening Inventory (SASSI); or

(B) Substance Abuse Life Circumstances Evaluation (SALCE); or

(C) NEEDS; or

(D) Mortimer-Filkins; or

(E) Triage Assessment for Addictive Disorders (TAAD); or

(F) Substance Use Disorders Diagnostic Schedule (SUDDS); or

(G) Michigan Alcoholism Screening Test (MAST); and

(4) A thorough face-to-face interview.

450:22-1-15. Assessor ~~and Qualified Practitioner~~ responsibilities

Certified assessors ~~and Qualified Practitioner~~ shall:

(1) Conduct assessments and based on assessment findings, recommend education or treatment or both;

(2) Report to the court within seventy-two (72) hours of assessing an individual if the individual is referred by the court;

(3) Provide information regarding state and local area education and treatment resources to each individual assessed;

(~~5~~4) Manage and distribute all reports according to confidentiality laws and regulations;

(~~6~~5) Assure there is no conflict of interest by:

(A) ~~Referring~~ referring individuals to those agencies in which ~~they have~~ the assessor has no vested interest; and

(B) ~~Providing~~ providing three (3) outside referral options in writing for each recommended service, or as many options as available within a 70-mile radius; and

(C) ~~Assuring there is no collecting of fees, issuing receipts, performing an assessment, or soliciting students to perform an assessment at a later date during an individual's Alcohol and Drug Substance Abuse Course~~ maintain written assessment documentation for a minimum of three years after completion of all assessment requirements. Written documentation shall include, but not be limited to:

(i) completed assessment instrument(s) and associated raw data;

(ii) clinical interview notes; and

(iii) referrals and recommendations made as a result of the assessment.

(~~7~~6) Provide liaison with court officials and related other agencies; and

(~~8~~7) ~~Assure compliance with statute by:~~

~~(A) The individual requesting an assessment shall be informed before coming for assessment the amount of the fee and that it is due at the time of assessment. In no case will the report be submitted to the court without payment of the fee or an approved payment plan. The fee for this assessment shall not exceed seventy-five dollars ($75.00)~~ Remit 10% of each fee collected for assessment and evaluation to the State Treasurer to be credited to the Department of Mental Health and Substance Abuse Services Revolving Fund. The fee for those undergoing an assessment and evaluation is one hundred seventy-five dollars ($175.00).

(8 ~~B~~) ~~Explaining~~ Explain possible liability and ability to pay for ODMHSAS-affiliated, private and other education and treatment facilities. ~~Education and treatment facilities will be responsible for establishing fees and determining the financial status of the individual requesting an assessment.~~

(9 ~~C~~) ~~Informing~~ Inform individuals receiving assessments that all contacts, evaluation results and reports are protected through federal regulations of confidentiality, 42 CFR Part 2.

(10) For those offenders receiving an alcohol and drug related license revocation on or before June 30, 2003, verify he or she has completed all tasks identified by the assessment and required for license reinstatement; and,

(A) provide the offender with a certificate of completion;

(B) affix the official assessor seal; and

(C) report completion to the Department of Public Safety.

(11) For those offenders receiving an alcohol and drug related license revocation on or after July 1, 2003, verify he or she has completed all tasks identified by the assessment and required for license reinstatement; and,

(A) provide the offender with a certificate of completion;

(B) affix the official assessor seal and stamp; and

(C) report completion to the Department of Public Safety.

(12) The fee for this verification of completion will be as set by the legislature.

(13) Provide ODMHSAS written notification of those offenders successfully completing required education and treatment, including the offender's name, address, date of birth and drivers license number.

[OAR Docket #04-873; filed 5-7-04]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM

[OAR Docket #04-839]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
590:10-1-3. Authorized member signature [AMENDED]
590:10-1-4. Health insurance contribution [AMENDED]
590:10-1-5. Withdrawal of ~~vested benefit~~ contributions [AMENDED]
590:10-1-16. Facsimile copies [NEW]
Subchapter 3. Credited Service
590:10-3-10. Incentive credit [AMENDED]
590:10-3-12. Military service credit [NEW]
Subchapter 5. ~~Maximum Annual~~ Contributions and Compensation [AMENDED]
590:10-5-8. Compensation for retirement purposes [NEW]
Subchapter 7. Retirement Benefits
590:10-7-6. Failure to submit documents [AMENDED]
590:10-7-15. Post-retirement employment [AMENDED]
590:10-7-17. Disability certification after early retirement [NEW]
Subchapter 17. Step-Up Election and Benefits [NEW]
590:10-17-1. Step-Up [NEW]
590:10-17-2. Eligibility for Step-Up [NEW]
590:10-17-3. Irrevocable election of Step-Up [NEW]
590:10-17-4. Step-Up effective date [NEW]
590:10-17-5. Step-Up contributions [NEW]
590:10-17-6. Termination, withdrawal and repayment of Step-Up [NEW]
590:10-17-7. Step-Up participating service calculations [NEW]
590:10-17-8. Step-Up and post-retirement employment [NEW]
590:10-17-9. Step-Up decision [NEW]
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Subchapter 1. General Provisions
590:10-1-3. Authorized member signature
[74 O.S. Section 909]

This rule amendment is designed to implement and facilitate the administrative objectives of the agency in protecting the members and beneficiaries. It contains the administrative guidance and procedures associated with powers of attorney, guardianships and transfers to minors pursuant to specific sections of Oklahoma law. It will provide members, joint annuitants and beneficiaries with the information necessary to ensure compliance.

590:10-1-4. Health insurance contribution
[74 O.S. Section 909, 921]

This rule amendment is designed to implement and facilitate the implementation of last session's SB 669 regarding payments of the health insurance subsidy to eligible providers from the OPERS Retirement Medical Benefit Fund.

590:10-1-5. Withdrawal of ~~vested benefit~~ contributions
[74 O.S. Section 909]

This rule amendment is designed to implement and facilitate the administrative objectives of the agency in ensuring that only eligible members can receive a withdrawal of their employee contributions and to discourage abuse of that process. It expands and clarifies the administrative practice regarding withdrawals of contributions in the event of termination of employment in compliance with opinions from the Attorney General.

590:10-1-16. Facsimile copies
[74 O.S. Section 909]

This new rule specifies which OPERS, URSJJ or SoonerSave documents must be provided as original signed documents. It further provides for acceptance of facsimile and/or scanned copies of certain OPERS required documents.

Subchapter 3. Credited Service
590:10-3-10. Incentive credit
[74 O.S. Section 909]

This rule amendment is necessary to comply with a statutory change regarding the eligibility to purchase incentive credit contained in SB 643.

590:10-3-12. Military service credit
[74 O.S. Section 909]

This new rule differentiates between the various statutory provisions governing the granting or purchase of military service credit, including the various provisions for members joining prior to July 1, 2000, for members joining after July 1, 2000, and for members joining after July 1, 2003, pursuant to Section 18 of HB 1647.

Subchapter 5. ~~Maximum Annual~~ Contributions and Compensation
590:10-5-8. Compensation for retirement purposes
[74 O.S. Section 909]

This new rule is proposed for administrative guidance and procedures associated with the determination of compensation for retirement purposes. It will clearly define the types of salary and wages that will be used for retirement compensation. Various types of pay incentives have been added over the years and the legislature gave to the Board of Trustees the exclusive authority to determine what monies would be included for retirement calculations pursuant to the provisions of SB 1223 and HB 1660 passed in 2002. This rule is a result of cooperative effort of OPERS, OPM and EBC. This proposed permanent rule is identical to and will supercede an existing emergency rule 590:10-1-14;

however, it is now being promulgated in Subchapter 5 as a more appropriate location in the Chapter.

Subchapter 7. Retirement Benefits

590:10-7-6. Failure to submit documents

[74 O.S. Section 909, 914]

This rule amendment provides a clarification of the requirements regarding submission of required documents for establishing and/or adjusting effective retirement dates when OPERS does not receive those documents.

590:10-7-15. Post-retirement employment

[74 O.S. Section 909]

This rule amendment merely provides a modernization of terminology for retired members in line with other terminology changes in practice. There is no substantive change.

590:10-7-17. Disability certification after early retirement

[74 O.S. Section 909]

This new rule is proposed for administrative guidance and procedures associated with changing retirement from early to disability for certain eligible members pursuant to the provisions of SB 643. It will clearly define the process and the type of benefits available.

Subchapter 17. Step-Up Election and Benefits

590:10-17-1. Step-Up

590:10-17-2. Eligibility for Step-Up

590:10-17-3. Irrevocable election of Step-Up

590:10-17-4. Step-Up effective date

590:10-17-5. Step-Up contributions

590:10-17-6. Termination, withdrawal and repayment of Step-Up

590:10-17-7. Step-Up participating service calculations

590:10-17-8. Step-Up and post-retirement employment

590:10-17-9. Step-Up decision

[74 O.S. Section 909]

These new rules establish a new Subchapter 17, which contains the administrative guidance and procedures associated with the Step-Up benefits established by SB 643. These new rules include provisions on the election, the irrevocability of the election, the contributions and the methods of calculation of the additional benefit.

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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 11, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

590:10-1-3. Authorized member signature

(a) A signature other than that of the member, joint annuitant or beneficiary will not be accepted on System forms, applications or requests for confidential information unless ~~this~~ the individual signing presents a power of attorney, papers of guardianship or conservatorship, or a legal court order. No person may act on behalf of the member, joint annuitant or beneficiary including a spouse or parent, except as provided herein.

(b) The System will accept documents signed by an authorized attorney-in-fact, pursuant to a durable or statutory power of attorney. The power of attorney must be in substantial compliance with Oklahoma law and/or the Oklahoma Uniform Durable Power of Attorney Act, must contain the statutorily prescribed language and/or witnesses and must be filed with and approved at the sole discretion of the System. The member, joint annuitant or beneficiary will retain the right to act regarding his or her retirement account. Any conflict in direction or instruction between the member, joint annuitant or beneficiary and the attorney-in-fact shall be resolved in favor of the member, joint annuitant or beneficiary. The right to act under a durable or statutory power of attorney terminates at the death of the principal.

(c) If a guardian or conservator has been appointed for a member, joint annuitant or beneficiary by a court of proper jurisdiction, only the named guardian or conservator can act on behalf of the member, joint annuitant or beneficiary. A certified copy of the filed court order of appointment must be filed with the System and will be effective until amended or withdrawn by subsequent court order. The guardian or conservator shall have exclusive authority to act on behalf of the member, joint annuitant or beneficiary unless the court instructs otherwise.

(d) Any person authorized to act on behalf of the member, joint annuitant or beneficiary as provided herein is prohibited from self-dealing relating to the benefit, account or funds of said member, joint annuitant or beneficiary. For purposes of this rule, self-dealing consists of any change or action which alters a previous instruction or document or makes an election or selection, either of which would result in a benefit or pecuniary interest to said attorney-in-fact, guardian, conservator, custodian or trustee or to the spouse or children of said attorney-in-fact, guardian, conservator, custodian or trustee absent a court order specifically permitting or approving such self-dealing issued by a court of proper jurisdiction. For illustrative purposes, an attorney-in-fact, operating under a durable power of attorney is prohibited from changing the member's beneficiary designation to him or her self and/or prohibited from naming his or her spouse as the joint annuitant under a retirement option.

(e) In the event that a named joint annuitant or beneficiary is a minor, the System will accept documents signed by a guardian appointed for the minor by a court of proper jurisdiction. If the property belonging to the minor is $10,000 or less, the System will accept documents signed by an authorized parent, relative or custodian pursuant to the Oklahoma Uniform Transfers to Minors Act. The parent, relative or custodian must provide all required forms and documentation for approval at the sole discretion of the System.

(f) This rule is applicable to any plan or account managed or administered by the Board.

590:10-1-4. Health insurance contribution

(a) The Oklahoma Public Employees Retirement System shall contribute the amount required by law towards the cost of health insurance coverage under the State and Education Employees Group Insurance Plan or other eligible group insurance plans only for ~~retirants~~ retired members who actually receive a monthly retirement benefit for that month. This contribution shall not be made for beneficiaries, survivors or directly to the ~~retirant~~ retired member.

(b) For eligible group health insurance plans other than the State and Education Employees Group Insurance Plan, the System will contribute the amount required by law after the group

insurance plan has made application to the System and completed any necessary and required forms and/or agreements. The group insurance plan must be in compliance with Oklahoma law and offer insurance to all of the covered participating employer's employees, former employees who are vested and former employees who retired from that covered employer. The insurance plan shall provide a certification monthly detailing each covered retired member in the form and manner required by the System. The subsidy shall be paid in arrears for each eligible retired member.

590:10-1-5. Withdrawal of ~~vested benefit~~ contributions

(a) A member of the System who has terminated employment with a participating employer shall be eligible to withdraw the amount of employee contributions and money he or she has paid into the System provided that the employee does not return to employment with such participating employer, or with another participating employer, within four (4) calendar months.

(b) The member shall file the proper application with the System. Payment shall be made by the System after receipt of all required forms and after four (4) calendar months have elapsed. Any member who applies for a withdrawal of his or her contributions and is eligible for a vested benefit shall be notified of the value of the benefit and when they would be eligible to begin receiving a benefit. The member must sign a written waiver of that benefit before withdrawal will be processed for payment. Payment of the withdrawal may be delayed beyond four (4) months in order to complete the offer of the vested benefit.

(c) In the event that a member is paid his or her contributions and the System discovers that the employee returned to employment with a participating employer within four (4) months, the employee shall be required to repay the withdrawal immediately. If the employee fails to repay the ineligible withdrawal, he or she shall not be entitled to any subsequent withdrawals until six (6) calendar months have elapsed in order to verify that they are no longer employed.

(d) Payment of these accumulated contributions may be made in less than four (4) calendar months only in the event that a member is not eligible to elect a vested benefit pursuant to this section and said member is terminally ill, as evidenced by a physician's certification that the member is not expected to live beyond four (4) months.

590:10-1-16. Facsimile copies

An original document containing a member's, joint annuitant's or beneficiary's signature is generally required on all System forms, applications or requests for confidential information except as provided herein or in 590:10-1-3. Retirement notice forms, beneficiary designation forms, Step-Up election forms and any form which requires a notarized signature, must always be provided as original signed documents. At the sole discretion of the System, a facsimile copy of certain types of other documents may be accepted if the copies are clear, legible and sufficient for imaging purposes. In some instances, these other documents may be accepted by facsimile only if followed by later delivery of an original document. The decision to accept facsimile copies shall be made on a case-by-case basis upon request of the member, joint annuitant or beneficiary. It is the member, joint annuitant or beneficiary's responsibility to verify that the System has received the facsimile copy and that it is legible and acceptable to the System. This rule is applicable to any plan or account managed or administered by the Board.

SUBCHAPTER 3. CREDITED SERVICE

590:10-3-10. Incentive credit

Pursuant to 74 O.S. §913(b) certain eligible members of the System may purchase up to two (2) full years of incentive credit at actuarial value.

(1) Incentive credit may be used as participating service or addition to age.

(2) Members are eligible for purchase of up to 2 years of credit (24 months).

(3) Employees who are ~~between the ages of 53 and 62,~~ eligible for normal or early retirement because of age or are within 2 years of reaching normal or early retirement age, members who have accumulated at least 78 points toward the Rule of 80, and/or members who have accumulated at least 88 points towards the Rule of 90 are eligible for this purchase~~.~~, ~~Elected~~ except that elected officials may purchase incentive credit to qualify for the Rule of 80 only~~.~~ and Hazardous Duty Members may purchase incentive credit to qualify only for the Rule of 80 or 90 or for early retirement.

(4) Incentive credit can not be used as full time equivalent employment. Members must have at least 4 years of the required 6 years of full time equivalent employment in order to be eligible for this purchase and must accrue 6 years of full time equivalent employment prior to retirement.

(5) Members must be active and participating at the time of purchase.

(6) This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.

(7) Although this was enacted as a retirement incentive, there is no requirement that members must retire if they make this purchase.

590:10-3-12. Military service credit

(a) Any member who joined the System on or before June 30, 2000, can receive up to five (5) years of military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. As set forth in Section 913 of Title 74 of the Oklahoma Statutes, the service credit can be prior service or participating service or a combination of the two, however, total military service credit cannot exceed five (5) years. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and

provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. If eligible, a retired member shall receive an increase in his or her monthly benefit as a result of the addition of the military service credit effective with the month following the receipt of the documents and approval by the System.

(b) Any active member who joined the System on or after July 1, 2000, can purchase up to five (5) years of military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. As set forth in Section 913 of Title 74 of the Oklahoma Statutes, the service credit can be prior service or participating service or a combination of the two, however, total military service credit cannot exceed five (5) years. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. The member must make payment in the amount determined by the Board pursuant to Section 913.5 of Title 74 of the Oklahoma Statutes and 590:10-3-8. This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.

(c) Military service credit will be credited or purchased in full months only. The initial month of military service will be accepted only if the service began on or before the 15th day of the month. The final month of military service will be accepted only if the service was completed on or after the 16th day of the month.

(d) Members who joined the System on or after July 1, 2003, can make the purchase set forth in paragraph (b) of this rule only if the member has not received credit for the same period of military service for retirement from another retirement system created pursuant to the Oklahoma Statutes. For such members, the military credit shall be granted or purchased in the retirement system from which the member retires first. In the event such a member fails to disclose a previous grant or purchase of military credit, the purchase will be voided, his or her service credit will be adjusted to remove the military service credit and only the purchase price shall be returned to the member.

SUBCHAPTER 5. ~~MAXIMUM ANNUAL~~ CONTRIBUTIONS AND COMPENSATION

590:10-5-8. Compensation for retirement purposes

(a) Compensation for retirement purposes, as determined by the Board of Trustees, shall be limited to salary and wages as follows:

(1) "Salary" means a predetermined or fixed amount of cash remuneration that is made payable by the participating employer to the employee in exchange for services rendered personally by the employee for the participating employer but excluding any type of overtime payments paid to an employee for service rendered in excess of full-time;

(2) "Wages" means cash remuneration, dependent upon the hours of work, that is made payable by the participating employer to the employee in exchange for services rendered personally by the employee for the participating employer excluding any type of overtime payments paid to an employee for service rendered in excess of full-time.

(b) Subject to the limitations contained elsewhere in the retirement act or in these rules, salary and wages include, by way of example and not by limitation, the following:

(1) any longevity payments made to employees based upon a standardized plan which recognizes length of service to the employer,

(2) pay differential which is paid to employees in return for special or hazardous shifts or in return for additional training or duties,

(3) amounts deducted from the employee's paycheck for retirement and deferred compensation contributions,

(4) pre-tax cafeteria purchases which are not funded by the employer or the employee's benefit allowance,

(5) performance, skill, or mission critical based pay adjustments.

(c) Any payments made by an employer to an employee which do not meet the definition of salary or wages as set forth in subsection (a) of this rule are not to be considered compensation for retirement purposes, including but not limited to the following:

(1) payments which are for reimbursement for expenses incurred by the employee,

(2) payments for maintenance or allowances, including, but not limited to, uniform allowances, clothing allowances, or housing allowances,

(3) any payments or amounts made available to an employee for insurance benefits or benefits allowances, including any amounts paid directly to the employee,

(4) illegal payments made to an employee by an employer,

(5) payments made in error to an employee,

(6) payments made by the employer for services rendered by the employee, which services are not part of the employee's job duties and responsibilities of his or her job position with the participating employer,

(7) payments in the form of tips or commissions paid to an employee in the course of his or her employment,

(8) payments made to other than the employee by the participating employer which are not deducted from the employee's paycheck,

(9) workers compensation benefit payments,

(10) any payments made by a participating employer to a non-employee, such as compensation to Board or Commission members,

(11) payments made in anticipation of employment, such as signing bonuses,

(12) any payments which are excluded from retirement compensation by law.

(d) The provisions of this rule shall be effective for all compensation paid for service by an employee to the employer on or after July 1, 2003. It shall be the responsibility of the employer to ensure that the appropriate retirement contributions are deducted or paid correctly and in accordance with this rule.

(e) The compensation of each member as set forth above shall be used for calculating the monthly retirement compensation for each retiring member. Provided, however, the calculation shall include the compensation prior to July 1, 2003, for which retirement contributions were withheld in determining the final average compensation, if applicable, for the highest three (3) years of the last ten (10) years of service.

SUBCHAPTER 7. RETIREMENT BENEFITS

590:10-7-6. Failure to submit documents

If all of a ~~retirant's~~ retired member's required documents have not been received by the fifteenth day of the month in which the first two retirement ~~warrants~~ benefit payments are to be ~~mailed,~~ issued, the effective retirement date will be changed to the first day of the next month ~~following receipt of the required documents~~. The System shall continue to adjust the member's effective retirement date until all of the required documents have been received pursuant to this rule. If the effective retirement date is adjusted more than four (4) times by the System as a result of this rule, the retirement shall be cancelled and the member shall be required to re-apply for retirement in compliance with all plan provisions. ~~No~~ Retirement benefits will be payable for the effective retirement month and no retroactive payments will be made back to the ~~original effective~~ originally requested retirement date if that date is adjusted pursuant to this rule.

590:10-7-15. Post-retirement employment

(a) A year of post-retirement service shall be determined as 2076 hours of participation. All ~~retirants~~ retired members who have post-retirement service with a participating employer and are eligible for an additional monthly benefit on or after January 1, 2000, pursuant to 74 O.S. 99 Supp. Section 914 (E) shall have said additional benefit calculated using the actual hours worked and reported and the actual compensation reported for which contributions have been paid for each 2076 hour period. Each 2076 hour period shall be calculated separately and benefits added each January 1 as appropriate. All applicable option and early retirement reductions selected by the member at the time of retirement shall be applied to the additional benefit.

(b) The initial addition of post-retirement benefits shall be made effective with the January, 2000 benefit payment. The additional benefits shall be cumulative and paid for the initial period to the extent OPERS can identify and verify post-retirement participation. Post-retirement employment for which the retired member has previously been granted additional benefits or for which a refund of contributions has been made will not be included.

(c) The addition of post-retirement benefits shall be available to ~~retirants~~ retired members who remain members on or after July 1, 1999. Joint Annuitant benefits shall be increased only if the member would have otherwise been eligible for the increase in benefits.

(d) For those ~~retirants~~ retired members who have returned to employment with a participating employer and waived receipt of their monthly retirement benefit pursuant to 74 O.S. Section 914 (E), retirement benefits will be recalculated only upon termination of employment after completion of thirty-six (36) consecutive months of full-time-equivalent employment, as that term is defined under 590:10-3-6 of these rules.

590:10-7-17. Disability certification after early retirement

(a) Effective January 1, 2004, a member who incurred a disability which would qualify that member for disability retirement benefits pursuant to subsection B. of Section 915 of Title 74 of the Oklahoma Statutes and who elected early retirement pending the receipt of the disability certification may elect to receive disability retirement in lieu of the previously selected early retirement. In order to be eligible for this election, the disability must have been incurred on or after July 1, 1999, and the member must meet all statutory requirements for disability retirement. The member's effective retirement date will not change, however, the member shall be entitled to receive the difference, if any, in the amount of the early benefit and the disability benefit as of the date the member would have been eligible for the disability benefit.

(b) The only retirement options available for disability retirement pursuant to subsection B. of Section 915 of Title 74 of the Oklahoma Statutes are a maximum benefit with no survivor options and Option A, with married members being required to elect to retire under Option A unless the member's spouse consents in writing to waive the survivor benefit and permit the member to receive the maximum benefit. A member who chooses to change his or her retirement from early to disability must maintain the survivor option selections originally chosen under early retirement to the extent permitted under the disability plan provisions and pursuant to this rule. The joint annuitant named at the time of early retirement cannot be changed.

(1) If the member, and the member's spouse if applicable, elected to receive the maximum retirement benefit with no survivor option at early retirement, the disability benefit will be paid as a maximum retirement benefit with no survivor option. Spouse consent for maximum benefits obtained at early retirement is effective for the disability retirement and no additional spouse consent is required.

(2) If the member, and the member's spouse if applicable, selected a retirement Option A at early retirement, the disability benefit will be paid as an Option A with the same named joint annuitant.

(3) If the member, and the member's spouse if applicable, selected a retirement Option B at early retirement, the disability benefit will be paid as an Option A with the same named joint annuitant under disability retirement. The member's named joint annuitant will be notified of the change to disability retirement under an Option A and of the reduction in the survivor benefit amount.

(4) If the member, and the member's spouse if applicable, selected a retirement Option C at early retirement, the disability benefit will be paid as a maximum retirement

benefit with no survivor option. Since the member retains the right to change the named beneficiary for the Option C benefits and therefore the named beneficiary obtains no property rights, the spouse consent for Option C obtained at early retirement is effective for the maximum disability retirement and no additional spouse consent is required, however, the member's named beneficiary for Option C will be notified of the change to maximum disability retirement with no survivor benefit.

(c) In the event of the death of the named joint annuitant, the benefit shall only be paid as a maximum non-survivor benefit and no other person shall be substituted as joint annuitant. The member shall not be permitted to change the option or joint annuitant selection in the event of a divorce and/or remarriage after the effective date of the member's early retirement.

SUBCHAPTER 17. STEP-UP ELECTION AND BENEFITS

590:10-17-1. Step-Up

An enhanced benefit computation factor is available to certain members of the Oklahoma Public Employees Retirement System provided an election form is properly completed and filed and additional actuarially determined contributions are paid. This enhanced benefit shall be called "Step-Up".

590:10-17-2. Eligibility for Step-Up

All state, county and local government employees who are active participants, including retired members who have returned to work, are eligible to make the Step-Up election, with the exception of elected officials and hazardous duty employees as provided in 590:10-1-15 of these rules (such as correctional officers, probation and parole officers, fugitive apprehension agents and Military Department firefighters).

590:10-17-3. Irrevocable election of Step-Up

(a) Eligible OPERS members may make an irrevocable election to Step-Up or increase their benefit computation factor from 2.0% to 2.5%. Participating members will not be permitted to revoke the Step-Up election or stop the Step-Up contributions once the election has been made. The election is considered to be made upon the earliest of OPERS receipt of a member's completed election form or deposit of the member's Step-Up contributions.

(b) The Step-Up election is an irrevocable election and is binding on all future participation in OPERS, even if there is a break in service, a change in jobs and/or a change in participating employers.

590:10-17-4. Step-Up effective date

Participation in the Step-Up can be effective as early as the first payroll period following January 1, 2004, provided that the member has signed and filed the election form with his or her Retirement Coordinator prior to that date. After January 1, 2004, the election can be made at enrollment or at any time while participating as an active member. The Step-Up will be effective the first payroll period following the member's election and acceptance of the election by the member's participating employer.

590:10-17-5. Step-Up contributions

After election of the Step-Up, the employee member is required to make a higher retirement contribution rate during all future participation. The contribution rate is actuarially determined and may be raised or lowered by law in the future.

590:10-17-6. Termination, withdrawal and repayment of Step-Up

Participating members are not permitted to withdraw any retirement contributions unless the member terminates employment and membership in the System. The Step-Up is binding on future participation in the event that the member elects the Step-Up, and subsequently terminates employment and takes a withdrawal of his or her employee contributions. In the event that such a member returns to employment with a participating employer, he or she must resume participation in the Step-Up. If such a member desires to repay the withdrawal, he or she is required to repay all amounts withdrawn, including any previous Step-Up contributions in order to reinstate the service credit.

590:10-17-7. Step-Up participating service calculations

The Step-Up will increase the member's computation factor to 2.5% for participating service which is accrued after the election. It will be computed for full years (12 months) of participating service only. For purposes of the Step-Up calculation, 2076 hours equals a full year of participating service. Partial years of service (including participation in the Step-Up for partial years), service prior to the Step-Up election, purchased credit, prior service, military service, transported service, bonus years and unused sick leave will all be calculated at the regular 2% computation factor.

590:10-17-8. Step-Up and post-retirement employment

(a) A retired member who returns to work with a participating employer and who made an election to participate in the Step-Up prior to his or her retirement, is bound by that election and must continue to participate in the Step-Up for all periods of post-retirement participation. A retired member who returns to work with a participating employer and who either did not have an opportunity to make the election to participate in Step-Up or who was eligible but chose not to make the election can begin participation in the Step-Up at any time during his or her post-retirement employment after January 1, 2004.

(b) For purposes of calculating post-retirement benefits for retired members who choose the Step-Up post-retirement, the addition of post-retirement benefits shall not be calculated at 2.5% until the additional Step-Up contribution has been paid on the entire 2076 hours of participation being used to calculate

the member's benefit increase for that year in accordance with 590:10-7-15 and 74 O.S. Section 914.

(c) It is the responsibility of the retired member to select the appropriate time, if ever, to elect the Step-Up for post-retirement participation. For illustrative purposes, if a retired member has participated in post-retirement employment for 1400 hours prior to making the Step-Up election, makes the Step-Up election and continues to participate as a retired member, the next 676 hours of participation while making Step-Up contributions will be combined with the previous 1400 hours and calculated at 2%. All future post-retirement participation will be calculated at 2.5%.

(d) The member cannot change the Step-Up election date and cannot receive a refund of Step-Up contributions made for any periods which are not calculated at 2.5%.

590:10-17-9. Step-Up decision

Each participating member must evaluate his or her individual circumstances in order to determine whether participation in the Step-Up is appropriate. The System cannot provide advice or calculations for the member regarding the member's decision whether to make the Step-Up election or the timing of that election.

[OAR Docket #04-839; filed 5-4-04]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 15. UNIFORM RETIREMENT SYSTEM FOR JUSTICES AND JUDGES

[OAR Docket #04-840]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
590:15-1-16. Longevity and other annual lump sum payments [REVOKED]
590:15-1-17. Military service credit [NEW]
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ANALYSIS:
590:15-1-16. ~~Longevity and other annual lump-sum payments~~
[74 O.S. §909, 20 O.S. §1108]
This proposed rulemaking action makes permanent the emergency repeal of the permanent rule providing for the determination of compensation for retirement purposes as it involves the use of longevity and lump-sum payments. This revocation is necessary due to the ineligibility of all members of the URSJJ to receive these types of payments.
590:15-1-17. Military service credit
[74 O.S. §909, 20 O.S. §§1102.2, 1108]
This new rule differentiates between the various statutory provisions governing the granting or purchase of military service credit, including the various provisions for members joining prior to July 1, 2000, for members joining after July 1, 2000, and for members joining after July 1, 2003, pursuant to Section 14 of HB 1647.
CONTACT PERSON:
Lydia Lee, Attorney and General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

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 11, 2004:

590:15-1-16. Longevity and other annual lump-sum payments [REVOKED]

~~(a) Only the three (3) highest annual longevity payments received during the last three years of salary (thirty-six months) will be added into the sum used in computing the final average compensation. If a retiring member is scheduled to receive a prorated longevity payment at or near the effective date of retirement, the prorated longevity payments will be used only in the amount actually paid and if it is one of the three highest longevity payments.~~

~~(b) Other lump-sum annual payments that are included as compensation for retirement purposes, shall be averaged over the previous twelve (12) months of salary immediately preceding the month of payment for use in computing the final average compensation. These lump-sum payments include those which are paid on an annual basis at the discretion of the employer.~~

590:15-1-17. Military service credit

(a) Any active member who joined the System on or before June 30, 2000, can receive up to five (5) years of prior military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. The service must be active military service and the member must have been

honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service.

(b) Any active member who joined the System on or after July 1, 2000, can purchase up to five (5) years of prior military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. The member must make payment in the amount determined by the Board pursuant to Section 1103G of Title 74 of the Oklahoma Statutes and 590:15-1-9. This purchase may be amortized over sixty (60) months as provided for in 590:15-1-10.

(c) Military service credit will be credited or purchased in full months only. The initial month of military service will be accepted only if the service began on or before the 15th day of the month. The final month of military service will be accepted only if the service was completed on or after the 16th day of the month.

(d) Members who joined the System on or after July 1, 2003, can make the purchase set forth in paragraph (b) of this rule only if the member has not received credit for the same period of military service for retirement from another retirement system created pursuant to the Oklahoma Statutes. For such members, the military credit shall be granted or purchased in the retirement system from which the member retires first. In the event such a member fails to disclose a previous grant or purchase of military credit, the purchase will be voided, his or her service credit will be adjusted to remove the military service credit and only the purchase price shall be returned to the member.

[OAR Docket #04-840; filed 5-4-04]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 25. DEFERRED COMPENSATION

[OAR Docket #04-841]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Election to Defer Compensation
590:25-3-2. Catch-up election [AMENDED]
590:25-3-3. Discontinuation [AMENDED]
Subchapter 9. Benefits
590:25-9-12. Emergency withdrawals [AMENDED]
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Subchapter 3. Election to Defer Compensation
590:25-3-2. Catch-up election
[74 O.S. Section 1701(B)]
This rule amendment is proposed solely to correct a typographical error which resulted from an additional unnecessary word. It contains no substantive change.
590:25-3-3. Discontinuation
[74 O.S. Section 1701(B)]
This rule amendment is proposed to reduce the discontinuation period for resuming participation in the Plan following a cessation of deferrals. This reduction is designed to encourage participants to resume deferrals as soon as they are able. It is a benefit to the participant.
Subchapter 9. Benefits
590:25-9-12. Emergency withdrawals
[74 O.S. Section 1701(B)]
This rule amendment is designed to provide for a more defined and efficient payment of emergency withdrawals from the Deferred Compensation Plan.
CONTACT PERSON:
Lydia Lee, Attorney and General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

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 11, 2004:

SUBCHAPTER 3. ELECTION TO DEFER COMPENSATION

590:25-3-2. Catch-up election

(a) In addition to the maximum limits under 590:25-3-1, the Plan provides for a limited catch-up election which will permit a Participant to defer the lesser of (i) $15,000.00 annually or (ii) his or her regular maximum as allowed under the plan plus any allowable amounts that were not used for the years after 1978 ("alternate catch-up limit"). Effective January 1, 2002, the Plan provides for a limited catch-up election which will permit a Participant to defer the lesser of two times the applicable IRS limit for the year or the alternate catch-up limit.

(b) This election is only available once. A Participant may use the catch up limitation only if not previously used ~~it~~ under this or any other plan. The election may be made no sooner

than the last three taxable years immediately preceding the taxable year in which the Participant reaches Normal retirement age. It can be made with respect to all three (3) years.

590:25-3-3. Discontinuation

The election of the Employee to participate under this Plan and the amount of compensation to be deferred is continuous, except that the Employee may discontinue participation or change his deferral amount at any time during the year by giving authenticated notice at least thirty (30) days prior to the effective date of such change. An Employee who elects to discontinue participation shall not again become eligible to participate in the Plan until ~~three (3) months have~~ one (1) month has elapsed from the Discontinuation Date, or ~~the next following January 1~~ as provided in 590:25-9-12. For purposes of this rule, authenticated means participant communication through the Plan's website, through the Recordkeeper's dedicated toll-free telephone service or by approved written form.

SUBCHAPTER 9. BENEFITS

590:25-9-12. Emergency withdrawals

Notwithstanding any other provisions of this Chapter, in the event of an unforeseeable emergency or financial hardship, such event being beyond the control of the Participant, a Participant may request the Plan Administrator to pay benefits to him or her immediately. If the application and justification for payment is approved by the Plan Administrator, payment ~~shall be effected as soon as possible after the first day of the month next following such approval being given~~ will generally be processed by the Recordkeeper within ten (10) business days upon authorization from the Plan. Benefits to be paid shall be limited strictly to that amount needed to meet the emergency situation constituting financial hardship. Any remaining benefits shall be paid in accordance with this Chapter. Effective February 1, 2002, two (2) or more emergency withdrawals paid will result in cancellation of that Participant's deferrals into the Plan for a period of not less than six (6) months following payment of the emergency withdrawal. For purposes of this rule any emergency withdrawals since the Participant's initial enrollment into the Plan will be considered when applying this rule except that no cancellation will occur until the Participant has had a subsequent emergency withdrawal after February 1, 2002. The Participant will be responsible for re-establishing his deferral amount upon completion of the six-month cancellation period.

[OAR Docket #04-841; filed 5-4-04]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 35. DEFERRED SAVINGS INCENTIVE PLAN

[OAR Docket #04-842]

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RULES:
Subchapter 13. Benefits and Distributions
590:35-13-9. Rollovers to eligible retirement plan [AMENDED]
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Subchapter 13. Benefits and Distributions
590:35-13-9. Rollovers to eligible retirement plan
[74 O.S. Section 1707(B)]
The rule change contains an amendment to permit rollovers out of the Deferred Savings Incentive Plan of non-taxable amounts as permitted under the Economic Growth and Tax Relief Reconciliation Act and other federal laws.
CONTACT PERSON:
Lydia Lee, Attorney and General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

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 11, 2004:

SUBCHAPTER 13. BENEFITS AND DISTRIBUTIONS

590:35-13-9. Rollovers to eligible retirement plan

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under

this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, 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: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); ~~and the portion of any distribution that is not includable in gross income;~~ and effective for distributions made after December 31, 2001, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

(2) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) 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 this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

(3) Distributee: A distributee means a Participant. In addition, the Participant or the Participant's surviving spouse are distributees with regard to the interest of the spouse.

(4) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

[OAR Docket #04-842; filed 5-4-04]

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

[OAR Docket #04-766]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Regents Education Program [REVOKED]
610:1-9-1. Purpose [REVOKED]
610:1-9-2. Definitions [REVOKED]
610:1-9-3. Administration of program [REVOKED]
610:1-9-4. Participants in program [REVOKED]
610:1-9-5. Delivery of courses [REVOKED]
610:1-9-6. Program Curriculum [REVOKED]
610:1-9-7. Class schedule [REVOKED]
610:1-9-8. Notification; certification [REVOKED]
610:1-9-9. Cost of program [REVOKED]
610:1-9-10. Contracting for assistance [REVOKED]
610:1-9-11. Effective date [REVOKED]

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ANALYSIS:
A review by OSRHE legal counsel of the current administrative rules relating to the Regents Education Program concluded that the rules do not meet the APA definition of a rule. The Regents Education Program rule is an internal policy statement; therefore it should remain as a Regent's policy, but be revoked as an administrative rule.

CONTACT PERSON:
Regina Switzer, Associate General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9335, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104.

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 (DATE): JUNE 11, 2004

SUBCHAPTER 9. REGENTS EDUCATION PROGRAM [REVOKED]

610:1-9-1. Purpose [REVOKED]

~~American higher education has thrived under the unique concept of lay governance. If that tradition is to continue, qualified men and women must be selected to serve as regents, and they must also be educated to govern in situations of increased complexity and accelerating change. A series of legislation was passed in Oklahoma during the late 1980s to improve Oklahoma higher education and increase its accountability [74 O.S.§ 3101]. That activity was capped by the passage of bills in 1990 calling for a regents' education program [70 O.S.§ 3228]. The purpose of the program is to educate Oklahoma regents and trustees about the nature of their responsibilities and the seriousness with which they should be undertaken. More specifically, the program is to provide information and understandings that will allow regents and trustees to perform their public responsibilities and to govern successfully in the face of greater calls for wider programs and services, mandates for greater accountability, changing clientele and demands, and resource scarcity.~~

610:1-9-2. Definitions [REVOKED]

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

~~**"Course bulletin"** means the schedule of Regents Education Courses which is distributed periodically and supplemented with updates.~~

~~**"Credit"** means clock hour credit earned to satisfy requirements of this program only. It does not refer to "collegiate" credit which can be applied to college/university transcripts.~~

~~**"Date of taking office"** means the date on which a qualified person (one who meets the age requirements and other qualifications set out in 70 O.S. § 3202[b]) "takes office" thus triggering the continuing education requirements. It is the first date on which one of the following sets of criteria is satisfied:~~

~~(A) The appointment has been confirmed by the Senate, the appointee has taken the oath provided by law, and the predecessor's term has expired, or~~

~~(B) The individual's nomination has been submitted to the Senate (but has not yet been confirmed), the current Regent has resigned (or otherwise vacated the office as provided in 51 O.S. § 8), the Governor has appointed the individual to hold the office on an interim basis pending Senate confirmation (74 O.S. § 2.2) and the appointee has taken the oath provided by law.~~

~~**"Hour"** means the unit of credit assigned by the State Regents to Regents Education Courses. The unit of credit will indicate the relative importance and value of the offering but will not exceed the actual hours and minutes of course duration.~~

~~**"Regents education courses"** means courses, seminars, lectures, videotapes, audiotapes, and satellite downlinks approved by the State Regents as part of the Regents Education Program and offered for credit.~~

610:1-9-3. Administration of program [REVOKED]

~~(a) The Oklahoma State Regents for Higher Education are charged with responsibility for developing and operating the Regents Education Program in consultation with the State Attorney General's office.~~

~~(b) A Regents Education Program Advisory Committee shall be formed to assist, advise, develop, and react to proposals.~~

~~(1) **Duties.** The advisory committee will provide counsel to the Chancellor as follows:~~

~~(A) designing, implementing, and refining the program, and~~

~~(B) developing an annual curriculum.~~

~~(2) **Membership/terms.** The provisions for membership and terms of the advisory committee are as follows:~~

~~(A) The advisory committee will be comprised of 8-10 individuals representing the faculty, administration, and board staff of two-year, four-year, and comprehensive institutions.~~

~~(B) A former regent or regents with service experience preferably on two of the three types of higher education boards (coordinating, governing, administrative) may also be selected to serve on the committee.~~

~~(C) Members of the committee will be appointed by the Chancellor.~~

~~(D) Ex-officio members of the committee will include the Assistant Attorney General serving as the higher education liaison, the Executive Assistant to the Chancellor for Board Relations, and the Executive Secretaries of the three multi-institution governing boards.~~

610:1-9-4. Participants in program [REVOKED]

~~(a) All regents and trustees for Oklahoma's 18 higher education boards appointed or reappointed after January 1, 1991, will complete the Regents Education Program as required by law.~~

~~(b) All regents and trustees for Oklahoma's 18 higher education boards appointed prior to January 1,1991, will be given the opportunity to participate in the Regents Education Program.~~

~~(c) All regents and trustees will be notified and given the opportunity to participate in the Regents Education Program even after the 15-hour requirement is satisfied.~~

~~(d) Opportunity to participate in portions of the program may be made available and announced to others in the higher education community, common and vocational-technical education, other sectors of state government, the public at-large, and regional/national education organizations.~~

610:1-9-5. Delivery of courses [REVOKED]

~~(a) Regents education courses will be offered at various locations within the state with at least one-half of the offerings to be offered outside the major population centers.~~

~~(b) Courses will be offered through the following sources:~~

~~(1) classroom settings on campuses~~

~~(2) seminar settings in various locations~~

~~(3) electronic media including audio tapes, satellite, compressed video, OneNet, videotapes, etc.~~

~~(c) The State Regents will host seminars/lectureships on an annual basis, each containing portions of program components as set forth in 610:1-9-6. Generally, it is expected that each annual seminar/lectureships series would offer 4-8 hours of credit.~~

~~(d) Courses may be hosted and offered by the following: The State Regents, colleges/ universities, other government agencies, civic groups, national education or other professional organizations, and others. All such courses and their credit must be approved in advance by the State Regents' office. The State Regents will maintain an official Regents Education Course Inventory and will provide official notice of credit opportunities to the state's regents and trustees and college/university presidents.~~

~~(e) Education sessions offered by institutions and board offices for their respective boards of regents may qualify for credit with advance approval.~~

610:1-9-6. Program curriculum [REVOKED]

~~Each Regent/Trustee appointed or reappointed after January 1, 1991, must complete 15 hours of continuing education within two years of the date on which the Regent/Trustee takes office. Individuals appointed to a board for a term of less than two years are expected to participate in the Regents Education Program. For purposes of the Regents Education Program, an initial term of less than two years and a successive appointment to the same or another board in The Oklahoma State System of Higher Education will be treated as a single term and the Regent/Trustee will have two years from the date he/she takes office for the initial appointment in which to complete the continuing education requirement. Two of the 15 hours must be in ethics as required by law [70 O.S. § 3228(A)]. The Regents Education Program will be comprised of three general areas of education as follows:~~

~~(1) Orientation is required as a prerequisite for the Regents Education Program for all Regents/Trustees appointed or reappointed after January 1, 1991.~~

~~(A) All boards are currently required to brief new members on the duties of their office within two weeks of appointment. [74 O.S. § 3101]~~

~~(B) Orientations are offered at the campus or system board site and conducted by the board secretary, president, and/or other executive officer familiar with the responsibilities of the board. (C) Board orientation sessions may qualify for up to four hours of Regents Education Program with advance approval.~~

~~(2) A minimum of eight hours is required to be spent on core programs. There is a standard, base-line knowledge necessary for the successful service of Regents/Trustees. Many members are successful business people and many have considerable experience in serving on boards of some type. While bringing these valuable perspectives to higher education lay governance, a familiarity with specific responsibilities of regents will be beneficial to understand and provide effective leadership for the higher education operation. Courses for the core programs would include:~~

~~(A) History and traditions of higher education and lay governance in America, such as:~~

~~(i) academic freedom and tenure,~~

~~(ii) institutional autonomy/central control, State System policies, State Regents/ governing board regents' responsibilities,~~

~~(iii) development of the three-tiered system of two-year colleges, regional universities, and research universities,~~

~~(iv) governance systems in higher education and the role of lay governance,~~

~~(v) the distinction between policy development and day-to-day management,~~

~~(vi) faculty and student roles in the governance process,~~

~~(vii) politics and higher education,~~

~~(viii) higher education finance (sources of support, as well as accounting practices and principles),~~

~~(ix) legal aspects of higher education and legal responsibilities of regents, and~~

~~(x) ethics issues facing individual regents, boards, and institutions (two hours required by law).~~

~~(B) Methods for delivery of this coursework include:~~

~~(i) The key method of delivery will be an annual one-to-two-day seminar. Core courses may also be taken through the year by one of the methods described below.~~

~~(ii) Multimedia package on Trustee Responsibilities (Kellogg Foundation/ Association of Governing Boards) to be shown at campus or board office locations.~~

~~(iii) Seminars conducted by well-known speakers, national education organizations, government agencies, etc., as approved by the State Regents.~~

~~(iv) Campus-based lectures by Oklahoma higher education faculty on specified topics.~~

~~(v) Videotapes on higher education leadership to be used in campus classroom settings with faculty-conducted question and answer sessions following.~~

~~(3) A minimum of three hours of higher education issues is required. Courses in this part of the curriculum will be designed to keep Oklahoma Regents and Trustees apprised of state and national issues that impact the operation of their colleges/universities and higher education generally. This curriculum will acquaint board members with the issues and provide information that will allow better planning for the future. Some of the issues may be a~~

~~take-off or expansion of issues more generally addressed in the core Regents' Responsibilities section, 610:1-9-6(2). Courses may be unrelated to institutional type or institutional type specific, such as:~~

~~(A) A workshop on Students—Yesterday, Today, and Tomorrow, which could include:~~

~~(i) changing American college student body and the effects of those changes on the nature of the institution, student support services, and long-range planning;~~

~~(ii) student retention and graduation;~~

~~(iii) advising and counseling, the multicultural, multiethnic campus; and~~

~~(iv) the non-traditional student, the differing roles of the different types of institutions.~~

~~(B) A workshop on higher education finance including presentations on:~~

~~(i) capital projects,~~

~~(ii) foundations,~~

~~(iii) state laws governing different kinds of money, and~~

~~(iv) different kinds of funding methods used in different states.~~

~~(C) Assessment and accountability in higher education, one of the hottest national issues today, concerning:~~

~~(i) the assessment of student learning,~~

~~(ii) evaluation of programs,~~

~~(iii) faculty evaluation and merit pay, and~~

~~(iv) strategic planning as a way of focusing resources and maximizing opportunities.~~

~~(D) Fundraising, including presentations on alternate sources and methods of funding.~~

~~(E) Other current issues such as:~~

~~(i) the role of athletics,~~

~~(ii) fraternities and sororities,~~

~~(iii) racism on campus, and~~

~~(iv) general education versus professional education.~~

~~(4) Methods for delivery of issues coursework are listed in (2)(B) of this Section.~~

610:1-9-7. Class schedule [REVOKED]

~~(a) The class schedule for the Regents Education Program will be announced via "Regents Education Program Bulletin". Updates may also be made using postcard alerts.~~

~~(b) The master annual schedule will be developed in consultation with the committees, councils, and offices as set forth in of 610:1-9-3(b) and submitted by the Chancellor for State Regents' approval. Updates in the annual schedule will be approved by the Chancellor in accordance with policy guidelines.~~

610:1-9-8. Notification; certification [REVOKED]

~~(a) Class schedules for the Regents Education Program will be circulated to all regents and trustees at the beginning of the fiscal year and to all new regents and trustees upon their initial appointment.~~

~~(b) Regents and trustees will be expected to register for the courses at least two weeks prior to their offering.~~

~~(c) Class instructors will certify course completion to the State Regents' office on forms provided by the Chancellor's office.~~

~~(d) The State Regents will issue Certificates of Achievement following completion of 15 hours of credit that includes a minimum of eight hours of core credit (with two hours in ethics), and three hours of issues credit.~~

~~(e) The State Regents will provide notification and alerts for Regents and Trustees regarding final opportunities to satisfy education requirements.~~

610:1-9-9. Cost of program [REVOKED]

~~(a) Insofar as state appropriated funds or external private funds are available, the State Regents will incur costs of speakers, materials, printing, postage, copying, and meeting room charges for the Regents Education Program.~~

~~(b) Regents and Trustees will incur the cost of meals, lodging, and travel and will be reimbursed in the usual manner according to the State Travel Law [74 O.S. § 500.1 et seq.].~~

~~(c) Seminar attendees who are not Regents and Trustees will be charged an announced nominal fee to cover costs of postage, copying, meeting materials, and seminar refreshments.~~

610:1-9-10. Contracting for assistance [REVOKED]

~~The State Regents will be responsible for arrangements for the offering of course work for the Regents Education Program and may contract or coordinate for assistance in one or more of the following:~~

~~(1) mailing of class schedules,~~

~~(2) printing of class schedules and bulletins,~~

~~(3) registration/certification activities,~~

~~(4) development of courses,~~

~~(5) utilization of faculty expertise,~~

~~(6) securing of meeting sites,~~

~~(7) meal arrangements,~~

~~(8) purchase and shipping of course materials.~~

610:1-9-11. Effective date [REVOKED]

~~The Regents Education Program shall become effective with the first full year class schedule to commence July 1, 1991.~~

[OAR Docket #04-766; filed 4-29-04]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-794]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Program Divisions within the Department

612:1-5-2 Division of Vocational Rehabilitation (DVR) [AMENDED]
612:1-5-4.1 Management Services Division (MSD) [AMENDED]
Subchapter 9. Compliance With Section 504 of the Rehabilitation Act of 1973
612:1-9-3 Required statement on DRS printed documents [AMENDED]

AUTHORITY:
The Oklahoma Commission for Rehabilitation Services; Rehabilitation Act, United States Code Title 29, Chapter 16, Oklahoma Statute Title 74, Section 166.1 et seq.

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ANALYSIS:
The name change is due to the expanded role of the unit. It now oversees the "Ticket to Work" program, the new Independent Living contracts, Employment and Retention and Job Placement contracts in addition to Supported Employment contracts. The agency's need to up-date and clarify the rules required clean-up language. The changes to DRS publications include required language about printing costs and a required statement that copies have been deposited with the OK Department of Libraries Publications Clearinghouse.

CONTACT PERSON:
Larry Bishop, Policy Development Administrator, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3408

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, 2004:

SUBCHAPTER 5. PROGRAM DIVISIONS WITHIN THE DEPARTMENT

612:1-5-2. Division of Vocational Rehabilitation (DVR)

The Division of Vocational Rehabilitation provides vocational rehabilitation services designed to result in an employment outcome for persons with disabilities. Priority is given to those with the most severe disabilities. The Independent Living Program provides services to persons with ~~very~~ severe disabilities to allow more independent functioning within the family or community.~~; funding from RSA is provided to support Independent Living Centers in the State. The Community Rehabilitation Services Unit administers Supported Employment services provided to persons with the most severe disabilities, and provides technical assistance for community rehabilitation facilities providing services for individuals with severe disabilities.~~ Employment Support Services (ESS) oversees an array of support services assisting field staff in securing employment and increasing independent living skills for agency clients. ESS administers contracts and provides technical assistance to community rehabilitation facilities contracting with DRS to provide Supported Employment, Employment and Retention, Job Placement and Consumer Independence Support Services. ESS also administers the Ticket to Work Program, including follow-up on Social Security cases. Special Services for the Deaf and Hard of Hearing Unit are provided through Interpreter Services Program and the Telecommunications Devices for the Deaf (TDD) Program. All unit heads, and the Vocational Rehabilitation Field Coordinators report directly to the Division Administrator. DRS has field staff assigned to meet the needs in every county of the state, although staff may not be officed in each county. Local office staff report to DVR Program Managers, who report to Field Coordinators at the State Office.

612:1-5-4.1. Management Services Division (MSD)

The Management Services Division provides all components of the Department administrative and programmatic support.~~ to all components of the Department. The program administrators for Central/Departmental Services, Policy Development and Program Standards, Human Resources, and Information Services report to the Deputy Director. Central/Departmental Services manages Department supplies, mail, property, communications, equipment and repair, inventory, contracts, purchasing and printing. The Policy Development and Program Standards Unit is responsible for management of the rulemaking process and maintenance of Department policy in accordance with State and Federal laws and regulations, measuring and monitoring program standards, and quality assurance. The Human Resources Unit is responsible for personnel recruitment, transactions and records, employee benefits, payroll, employee assistance and relations, human resource development, and risk management. The Information Services Unit is responsible for data systems maintenance, statistical reporting, data systems programming, and personal computer support. The administrator for the Budget and Finance Unit is the Chief Fiscal Officer who reports to the Director. The Budget and Finance Unit is responsible for developing and administering the Department budget, Federal and general accounting, revenue and claims processing.~~

SUBCHAPTER 9. COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973

612:1-9-3. Required statement on DRS printed documents

(a) The following statement is required on all DRS publications, newsletters and other printed documents: The statement "The Oklahoma Department of Rehabilitation Services (ODRS)~~DRS~~ is an equal opportunity employer and a provider of services and/or assistance, and is in compliance with the Civil Rights Acts 1964 and 1991, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Executive ~~orders~~order 11246, as amended. DRS does not discriminate on the basis of race, color, national origin, sex, religion, age, disability or veteran's status in employment or provision of services." ~~and 11375" is to be included in all publications, newsletters and other printed documents of DRS.~~

(b) The following information shall be set forth in a separate paragraph and shall conform as nearly as practical to the following format: "This publication, printed by (name of printing firm) is issued by the Oklahoma Department of Rehabilitation Services as authorized by (either a statutory citation, if applicable, or the Commission for Rehabilitation Services). It was produced by (name of office). A total of (number) copies have been printed at a cost of $(amount). Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries. For additional copies, contact (office) at (phone number). Available in Accessible Formats."

[OAR Docket #04-794; filed 5-3-04]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 3. MANAGEMENT SERVICES DIVISION

[OAR Docket #04-795]

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PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
612:3-1-3. Functions of the division [AMENDED]
Subchapter 5. Policy Development and Program Standards
Part 3. Policy Development
612:3-5-13. Drafting of new or revised policy [AMENDED]
AUTHORITY:
The Oklahoma Commission for Rehabilitation Services; Rehabilitation Act, United States Code Title 29, Chapter 16, Oklahoma Statute Title 74, Section 166.1 et seq.
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ANALYSIS:
The changes to Chapter 3 involve the streamlining of policy and clarification of the Executive Team's review and response to proposed policy changes. The agency's need to up-date and clarify the rules required clean-up language for both policy sections.
CONTACT PERSON:
Larry Bishop, Policy Development Administrator, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3408

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, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

612:3-1-3. Functions of the division

The division of Management Services provides all components of the Department administrative and programmatic support ~~to all components of the Department~~ including budget and finance, human resources, purchasing, contracts, property management, information services, policy management and program standards. ~~The administrators for Central/Departmental Services; Policy Development and Program Standards; Human Resources; and Information Services report to the Deputy Director. The administrator for the Budget and Finance Unit is the Chief Fiscal Officer who reports to the Director. The Budget and Finance Unit is responsible for developing and administering the Department budget, Federal and general accounting, revenue, and claims processing. Central/Departmental Services manages Department supplies, mail, property, communications, equipment and repair, inventory, contracts, purchasing and printing. The Policy Development and Program Standards Unit is responsible for development and maintenance of Department policy in accordance with State and Federal laws and regulations, developing and monitoring program standards, and quality assurance. The Human Resources Unit is responsible for personnel recruitment, transactions and records, benefits, payroll, employee assistance and relations, human resource development, and risk management. The Information Services Unit is responsible for data systems maintenance, statistical reporting, data systems programming, and personal computer support.~~

SUBCHAPTER 5. POLICY DEVELOPMENT AND PROGRAM STANDARDS

PART 3. POLICY DEVELOPMENT

612:3-5-13. Drafting of new or revised policy

(a) The administrators in each division, at each school, and in the executive offices are responsible for keeping informed of the statutes and regulations which govern the operation of programs under their authority. These administrators are also in the best position to know the needs of his or her programs' consumers, staff, and service partners. Each Division Administrator, Unit Administrator, and School Superintendent is therefore responsible for ensuring that Departmental policies for his or her program conform to the requirements of applicable statutes and regulations, and are effective in achieving their program's mission. Whenever possible, drafting of new or revised policies should begin at least twelve months in advance of their intended effective date.

(b) When an administrator, or the Director, decides there is a need to draft new policy, or to amend existing policy, the Unit Administrator, Division Administrator, Superintendent, Deputy Director or Director will assure that sufficient opportunity for input on the needed changes will be given to individuals and groups as designated by the administrator or Director. The appropriate program administrator is to consult with Policy Development staff about the need to arrange for, announce, and hold any public forums. Public comments and responses to them must be submitted to the Policy Development Section for inclusion in the rulemaking record. Policy Development staff assistance in developing a summary of comments and responses is available.

(c) The appropriate program administrator will initiate drafting of policy content through whatever method deemed most effective by the administrator. Policy Development Section staff will provide assistance as requested. The Policy Development Section will be responsible for drafting Departmental policy pages using the content drafts provided by the appropriate program administrator. Once this first draft is completed, Policy Development staff will consult with the appropriate administrator concerning any needed revisions. When these are completed, the draft policy will be distributed to Executive Team members for review and response. Administrators will consider comments and revise drafts as appropriate, providing final draft versions to the Policy Development Section.~~at least 30 calendar days prior to the meeting at which the draft policy will first be discussed.~~ The appropriate program administrator will determine when the draft policy is ready for distribution to Departmental staff for comment. Staff comment will be obtained as follows:

(1) A memo will be addressed to all Departmental staff advising them that the draft policy is being distributed for comment, and will include:

(A) identification and summary of the draft policy being distributed;

(B) general instructions on where the draft policy can be accessed;

(C) how to submit comments, and the due date for submission of comments; and

(D) where to direct questions about the draft policy.

(2) Policy as drafted by the Policy Development Section will be distributed to each office of the Department (including alternative formats). The Bulletin Board memo will provide instructions for providing comments and where to direct questions about the draft policy. Alternative formats are also to be made readily available.

(3) Comments will be returned to the Policy Development Section where they will be collated, and a summary of them developed. The summary and collated comments will be provided to the appropriate program administrator. The appropriate program administrator will decide on what policy changes to make in response to the submitted comments, if any. The appropriate program administrator will draft responses to the comments, which will at a minimum explain any instance in which staff recommendations were not adopted and will be forwarded to the respective commentator as well as the Policy unit.

(4) Policy Development staff will work with the appropriate program administrator to finalize draft policy. This step will include a final check for consistency with existing policies, regulations, and applicable statutes. Policy Development staff will obtain authorization from the appropriate program administrator to proceed with promulgation of the draft policy.

(d) When the draft policy pages are submitted to the Policy Development Section for promulgation, the draft policy is then referred to as proposed policy. Policy Development staff will submit the proposed policy and/or notice, including executive summary and resolution, to the Director for review prior to submission to the Commission for discussion or action.

[OAR Docket #04-795; filed 5-3-04]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. ~~REHABILITATIVE~~VOCATIONAL REHABILITATION AND VISUAL SERVICES

[OAR Docket #04-796]

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PERMANENT final adoption

RULES:
Chapter 10. ~~Rehabilitative~~Vocational Rehabilitation and Visual Services [AMENDED]

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The Oklahoma Commission for Rehabilitation Services; Rehabilitation Act, United States Code Title 29, Chapter 16, Oklahoma Statute Title 74, Section 166.1 et seq.

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ANALYSIS:
Change in Federal Law requires changes to DRS policies. Also, changes were made as a result of recommendations from the Federal Rehabilitation Services Administration and the RSA audit in order for DRS to more fully comply with the Federal Act. Clean-up language was necessary in order to provide clarity to staff regarding the various processes needed to implement these policies. Also, Oklahoma Statute Title 56, section 199.2C authorizes this agency to charge a fee to recoup costs incurred in testing and certifying interpreters.
CONTACT PERSON:
Larry Bishop, Policy Development Administrator, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3408

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, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

612:10-1-2. Definitions

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operating a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility and priority for services; and who is available to complete the assessment process.

"Authorized Representative" means a client's or applicant's parent, guardian, advocate (i.e. Client Assistance Program) or other person designated by the client or applicant as the individual authorized to deal with the Department on behalf of the client or applicant, consistent with provisions of the Act. Authorized representative does not include an employee of the Department of Rehabilitation Services, another state agency, or vendor of the Department unless the person is actually the parent, guardian, or is serving in the capacity of guardian (for example: court appointed).

"Blind" means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

"Client/Consumer" means an individual found eligible and receiving services under the Act.

"CISS" means Consumer Independence Support Services

"Clubhouse model" means a psychosocial and vocational approach to work adjustment for people with mental illness. The work-ordered day is a core element of the clubhouse, which focuses on strengths, talents and abilities. Work in the clubhouse helps members develop appropriate social skills and gain self worth, purpose, and confidence. The clubhouse enables members to return to paid work through Transitional Employment, Supported Employment and independent employment.

"Community rehabilitation program" (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

"Comparable benefits" means services and/or funding available through any other programs and/or resources which will meet in whole or in part the cost of rehabilitation services provided to an eligible individual. For the purposes of this definition, the term "resources" does not include client assets as determined under 612:10-3-1 through 612:10-3-7.

"Compensatory training" means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which the individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have disabilities.

"Continuity of Services" means once an individual is selected for services in accordance with policy, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

"Core Independent Living Rehabilitation (IL) services" is defined as information and referral services; independent living skills training; peer counseling; and individual and systems advocacy.

"Core Vocational Rehabilitation (VR) services" means services which substantially reduce the impact of functional limitations on employment outcomes. Physical and mental restoration services are examples of core VR services. Supportive services such as maintenance and transportation do not fall within the definition of core Vocational Rehabilitation services.

"Department" unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

"DRS" means the Department of Rehabilitation Services.

"Durable Training Supplies" means general training supplies which are not consumable, and are required for any student taking a particular course of study at an institution of learning, or required by a client as a reasonable accommodation for training. In general, any training supply which a client could not continue to use past successful rehabilitation, or which could not be used by other clients in future terms of training, would not meet the definition of "durable training supply".

"DVR" means the Division of Vocational Rehabilitation.

"DVS" means the Division of Visual Services.

"Eligibility" or "Eligible" means:

(A) when used in relation to an individual's qualification for Vocational Rehabilitation services, a determination that the individual has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; can benefit in terms of an employment outcome from rehabilitation services; and requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment;

(B) when used in relation to an individual's qualification for Supported Employment services, a determination that the individual is eligible for Vocational Rehabilitation services; is an individual with the most severe disabilities (priority group one); and

(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(iii) who, because of the nature and severity of their disability, need intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work;

(C) when used in relation to an individual's qualification for Rehabilitation Teaching services, certification that the individual is legally and/or functionally blind or has a rapidly progressive condition and may have secondary disabilities; the individual has identifiable deficiencies in independent living due to disabilities; and it is expected services will improve the individual's independence in the home and community;

(D) when used in relation to an individual's qualification for Independent Living Rehabilitation services, certification that the individual has a severe physical or mental disability; the disability results in a substantial limitation or inability to function independently in the family or community or to continue in employment; and a reasonable expectation that independent living services will significantly assist the individual improve his/her ability to function independently.

"Employment and Retention" (E&R) means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

"Employment outcome" means, with respect to an eligible individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment (including self-employment, telecommuting, or business ownership) that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

"Extended period of time" means when appropriate services are provided in a timely and orderly manner, completion of the Individualized Plan for Employment (IPE) will be expected to require a minimum of 6 months.

"Extended services" means ongoing support services provided to individuals with the most severe disabilities after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

"Functional capacities" means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-direction, interpersonal skills, work tolerance, or work skills.

"Functional limitations" means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

"Higher education" means universities, colleges, community/ junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Highly challenged" describes a client receiving supported employment services who, due to the nature of the disability, requires a greater level of support from the job coach to achieve and maintain employment.

"Homemaker" means a person whose primary work is performance of duties related to upkeep and maintenance of a home.

"IEP" means Individualized Education Program as required by the Individuals with Disabilities Education Act.

"Individual with a disability" means an individual having one or more physical or mental conditions which materially

limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

"Individual with severe disability" means an individual with a significant disability, as used in the Rehabilitation Act amendments of 1998, and an individual:

(A) who has a physical or mental impairment seriously limiting one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, mental retardation, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Individual with the most severe disability" means an individual with the most significant disability as used in the Rehabilitation Act amendments of 1998, and an individual with physical or mental disabilities:

(A) who has a severe physical or mental disability that seriously limits three or more major life activities in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, mental retardation, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Integrated setting" means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(C) A job site where the individual with severe disability works in a group of not more than eight workers with disability and interacts regularly in performance of job duties with non-disabled co-workers and/or members of the general public.

(D) Interaction with individuals who provide ongoing supported employment services at the job site does not satisfy the integration requirement.

"Intercurrent (acute) conditions" means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

"IPE" means the Individualized Plan for Employment.

"Job Club" is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

"Job Coach/Employment Training Specialist" means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

"Long-term treatment" means medical or psychological treatment that is expected to last more than three months.

"Maintenance" means a supportive service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE.

"Milestones" means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

"Multiple services" means the counseling and guidance provided as a routine part of case management plus two or more core VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package ~~would~~do not count as multiple services for the purpose of determining the presence of a severe disability, even if two or more core services are

included in the package. Core services include~~, but are not limited to~~:

(A) ~~Restorative services~~**Restorative.** Services including surgery, hospitalization, medical treatment, anesthetic, psychiatric treatment, psychological counseling, nursing, medication;

(B) ~~Prosthetics,~~**Auxiliary.** Services including prosthetics, orthotics, hearing aids, wheelchairs, other durable medical equipment, physical therapy, speech therapy, ~~eyeglasses~~optics;

(C) ~~Assistive technologies and services,~~**Assistive technology.** Services including accommodations, sensory aids, telecommunication devices, low vision aids, assessment, training, modification, and specialized adaptive equipment;

(D) ~~Specialized services~~**Specialized.** Services for individuals who are blind, deaf or severely disabled may include rehabilitation teaching, orientation and mobility training, reader services, interpreter services, personal ~~assistance~~attendant services, and personal ~~or work~~ adjustment training;

(E) ~~Training services~~**Training.** Services including ~~tuition, fees, books and supplies, training tools and equipment~~ college and university training, occupational and vocational training, on-the-job training, remedial training, ~~job coaching, on-the-job training~~ job readiness training, work adjustment training, work site learning, all other training;

(F) ~~Selective placement~~**Selective placement.** Services including job coaching, ~~job duty analysis, work station analysis, adaptation and occupational tools~~ job duty and workstation analysis, job duty and workstation adaptation, supported employment, vocational technician services, and employment and retention services; and/or

(G) ~~Substantial~~**Intensive counseling.** Services including therapeutic or adjustment guidance and counseling, such as counseling that is directed toward the acceptance of disability.

"Natural supports" means any assistance, relationships or interactions that allow a person to maintain employment in ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be developed through relationships with people or put into place by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

"Occupational license" means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

"Ongoing support services" means services specified in the IPE according to individual need, which support and maintain an individual with the most severe disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural supports, following transition throughout the individual's term of employment. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Package of services" means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of core services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

"Physical and mental restoration services" means services which are necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive, within a reasonable period of time.

"Physical or mental disability" means a physical or mental condition which, if not corrected, materially limits, contributes to limiting or will result in limiting an individual's activities or functioning.

"Place/Train Model of Supported Employment" describes a type of contracted service that is structured to meet the needs of individuals with the most severe disabilities in priority group one. The model provides the individual substantial assistance in making a job choice, in getting a job matching the choice, a significant amount of job site support to learn job tasks and to stabilize in the job, and long-term supports to retain the job.

"Preparation/Place/Train Model of Supported Employment" describes a type of contracted service that is structured to meet the needs of individuals with the most severe disabilities in priority group one. The model is designed to build work adjustment skills and ego strength to assist the individual to prepare for work, teach methods for obtaining and maintaining employment, clarify strengths and interests, make career choices, adjust to the demands of the work environment and maintain long-term employment.

"Referral" means information provided to agency staff regarding an individual who may need vocational rehabilitation services; information or direction provided to an individual regarding services and resources available from other agencies or service providers; or information and direction provided to an individual regarding opportunities for employment. A referral may include arranging for appointments on behalf of the individual.

"Rehabilitation Act" means the Rehabilitation Act [29 USC 701 et seq.].

"Related factors" means those factors which are not directly attributable to the impediment to employment, but which have impact on the potential for successful rehabilitation. They frequently become evident only from an assessment of the person's social, vocational, educational, and environmental circumstances.

"Small business enterprises" means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such

businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

"Stabilization" means the period of time when job coach support is reduced to the long-term maintenance level while the individual retains employment, and personal satisfaction with the job, as well as employer satisfaction with the person's job performance. Stabilization must include appropriate individualized supports, including a minimum of two employee contacts and one employer contact per month.

"Substantial impediment to employment" means that a physical or mental disability (in the light of related medical, psychological, vocational, educational, cultural, social or environmental factors) that impedes an individual's occupational performance, by preventing his/her obtaining, retaining, or preparing for a gainful occupation consistent with his/her capacities and abilities.

"Supported employment" (SE) means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most severe disabilities who meet the eligibility criteria for supported employment. This term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness (see the definition for "transitional employment").

"Supportive services" means vocational rehabilitation services provided so eligible individuals may derive the full benefit of core services being provided under an IPE.

"Transitional employment" (TE) means, when referring to the Supported Employment Program, a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness.

"Transportation" means a supportive service provided to assist with the costs of travel, including instruction in the use of public transportation vehicles and systems, which result from and are needed to support the individual's participation in diagnostic, evaluative, or other substantial and necessary VR services.

"Unpaid family worker" means a person who works without pay on a family farm or in a family business, operated by a family member who is related by blood or marriage.

"VR" means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

"VR Counselor" means the qualified rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's VR services case record, including determination of eligibility, service planning and management, and determination of successful or unsuccessful rehabilitation. VR Counselor is equivalent to such terms as VR Specialist, VR Coordinator, and Rehabilitation Teacher who manage Visual Services cases with Homemaker goals.

"VS" means Visual Services.

SUBCHAPTER 5. GUIDELINES FOR EVALUATING THE LIMITATIONS AND REHABILITATION NEEDS OF CERTAIN DISABILITY GROUPS [REVOKED]

612:10-5-1. (HIV) Human Immuno Deficiency Virus / Acquired Immune Deficiency Syndrome (AIDS) [REVOKED]

~~(a) (HIV) Human Immuno Deficiency Virus is the virus that causes AIDS.~~

~~(b) AIDS is a disease damaging the body's natural immune system thereby reducing the ability to fight off infections and diseases. As a result, persons with AIDS may develop rare forms of cancer, pneumonia and other opportunistic infections.~~

~~(c) Decisions regarding eligibility of persons who have tested positive for HIV or have an AIDS diagnosis for services through DRS are the responsibility of the rehabilitation counselor, and eligibility is determined in the same manner as with other disability categories.~~

~~(d) Each case must be evaluated individually with history, prognosis and a determination of whether or not the individual can benefit from rehabilitation services in terms of an employment outcome.~~

~~(e) Individuals who have been diagnosed as having HIV/AIDS will be considered to have a substantial disability.~~

612:10-5-2. Alcoholism [REVOKED]

~~(a) Functional limitations will vary from individual to individual depending on the individual's psychological and physiological responses to problem consumption of alcohol. The counselor will be aware that some individuals who consume heavily are not substantially affected functionally. The actual amount a person consumes or whether he/she has been diagnosed as abusing or being dependent upon alcohol is less significant than how it affects them. The presence, onset, severity, and duration of the following symptoms are significant: tremors, blackouts, paranoid ideations/delusions, delirium, convulsions, peripheral neuropathy, impaired orientation, impaired memory, deficits in intellectual functioning, emotional liability, shallow affect, impaired judgment, ineffective interpersonal relationships, impaired manual dexterity, irregular speech patterns, inadequate eye-hand coordination and physical symptoms of other alcohol-related disabilities. Each of these symptoms will manifest itself in different functional behaviors in particular clients.~~

~~(b) Any alcohol-related limitation may have an impact on the vocational adjustment of the individual, resulting in impediments to employment such as chronic absenteeism, tardiness,~~

~~job hopping, and inability to relate effectively with co-workers and supervisors. Each of these manifests somewhat differently in any given individual. Sometimes through fear of being rejected, an alcoholic client may leave a job prior to being fired rather than deal actively with the alcohol problem. In other cases loud altercations with employers might be the cause of termination. The more accurately these behaviors can be identified, the more effectively the counselor will be able to plan the IPE to minimize or work around them. Clients who are accepted on the basis of alcoholism must be enrolled in a treatment or maintenance program. Those individuals who are alcohol free for two or more years will not be eligible on a primary disability of alcoholism.~~

612:10-5-3. Allergies [REVOKED]

~~A large segment of our population is subject to allergies to some degree. It is very important, therefore, to obtain a thorough history when an applicant alleges a disability due to allergies. Medical reports can only be used from a physician skilled in the diagnosis and treatment of allergies. The two allergic conditions most often confronting the counselor are:~~

~~(1) **Allergic rhinitis.** Individuals whose only disability is hay fever or allergic rhinitis are not considered to have a substantial disability.~~

~~(2) **Physical allergies.** Some individuals are sensitive to one of the physical agents (light, heat, cold, chemicals, food, etc.) which cause allergic reactions. Only the most severe conditions will be considered eligible for services.~~

612:10-5-4. Asthma [REVOKED]

~~Asthma is characterized by recurrent attacks of dyspnea, characteristic wheezing type, due to reactions to various allergens. In addition to the relative incidence of the disease, it causes a significant number of deaths annually. The primary symptoms of asthma are wheezing, difficulty breathing and cough. The main characteristic of asthma differentiating it from other airway diseases is its ability to respond to medications. The cause or causes need to be specifically established and appropriate treatment rendered. Treatment would include medicines and/or allergy injection treatments if allergies can be shown to be one of the causes of the asthma. Avoidance and elimination of irritants in that person's environment also are of extreme importance. When asthma or allergies are diagnosed, the counselor will consider items in paragraphs (1) - (3) in making a determination whether the applicant has an impediment to employment:~~

~~(1) When an individual participates in sports calling for strenuous activities, a physician's statement is required if it is a part of the treatment plan.~~

~~(2) What is the scope of treatment?~~

~~(A) Does the individual receive regular treatment? Desensitization shots? Regular oral medication?~~

~~(B) Is the individual willing to undergo treatment if treatment is recommended? If the client is willing to undergo treatment as recommended, it will be provided either by the client or at DVR or DVS expense, depending on the client's ability to participate in the cost of services. Refusal to undergo treatment will be an indication the condition is not severe enough to be considered an impediment to employment.~~

~~(C) Has the applicant been required to seek emergency medical treatment or hospitalization because of his condition?~~

~~(3) Does the applicant have a history of asthma for a year or more? Documentation of the diagnosis is made by a specialist.~~

612:10-5-5. Arthritis [REVOKED]

~~The disease may be any one of several different types. Perhaps the most serious type is rheumatoid since it usually occurs during the working years. Once arthritis is diagnosed, treatment may be provided if:~~

~~(1) The specialist diagnosing the condition indicates the condition is expected to respond to treatment within a reasonable length of time. (Not more than a four-month period.)~~

~~(2) The disease is not so progressive that no appreciable benefit from treatment is expected. Before treatment is provided in such instances, the counselor will discuss the case with the supervisor and/or the medical consultant.~~

612:10-5-6. Back disorders [REVOKED]

~~(a) Back disorders are one of the most common complaints heard by physicians. It is also one of the most difficult complaints to diagnose because it can result from many causes ranging from mechanical to psychosomatic. Emphasis will be focused first on job modification, physical restoration services, or placement prior to any retraining.~~

~~(b) No individual diagnostic test is absolutely confirmatory of back pathology. The results of any tests performed must be considered along with the history and physical examination in a formulation of a diagnosis of low back pain. Orthopedic records are necessary for evaluation of the cause and functional limitations caused by the disability. A neurological examination may also be necessary to determine the amount of nerve damage or complications. In addition to examining the individual and observing his/her movements, other tests such as x-rays, electromyograms, myelograms, and CAT scans may be requested. Individuals plagued with chronic pain often develop fear, anxiety, and depression over their inability to function normally. Additionally, pain may sometimes be reinforcing to the client who receives attention or monetary compensation because of it.~~

~~(c) Because functional limitations and their severity vary from client to client, the counselor needs to ask specific questions of the physician regarding what the client is able to do and actions which should be avoided. These limitations can then be related specifically to the client's work history and job requirements in areas being considered as vocational objectives.~~

612:10-5-7. Cancer [REVOKED]

~~(a) Individuals who have been diagnosed as having cancer may be provided rehabilitation services if:~~

~~(1) There is documented evidence the condition is stable or slowly progressive as shown by a report from the attending physician.~~

~~(2) The individual's life expectancy is such that a substantial vocational outcome will result from vocational rehabilitation services.~~

~~(3) There is residual disability resulting from treatment which causes an impediment to employment.~~

~~(b) In some cases cancer is progressive and terminal regardless of surgical or treatment procedures. When cancer responds to surgery or treatment, and goes into remission with little effect, the individual's employability is not threatened.~~

~~(c) Requests for surgery or medical treatment for individuals known to have cancer will be referred to the Medical Consultant for review.~~

~~(d) Individuals who have had extensive surgery and/or treatment or those for whom those services are recommended often have a poor prognosis and will not be accepted. Counselors must use extreme tact and diplomacy when denying eligibility due to a poor prognosis, and confer with the attending physician to learn what the client knows regarding his or her condition.~~

~~(e) DVR and DVS do not provide long term or ongoing medical treatment. Persons needing long term or ongoing treatment are to be referred to the Department of Human Services' Medical Assistance Program.~~

612:10-5-8. Cardiac disorders [REVOKED]

~~(a) Usually diagnosis and prognosis will be approached using noninvasive tests before invasive studies are recommended. Insecurity and other emotional problems often accompany cardiac conditions and psychological evaluation may be necessary.~~

~~(b) Individuals with heart disease are commonly classified according to their ability to perform usual, everyday tasks. One unit now commonly used to grade activities is the Metabolic Equivalent (MET). A MET is the amount of oxygen consumed per kilogram of body weight per minute. One MET is the amount of oxygen utilized (VO2) at seated rest, approximately 3.5 ml. per kilogram per minute. Thus, an activity requiring five METs requires five times as much energy as seated rest. It is important for the counselor to realize activities can only be graded as usually requiring an approximate number of METs because the amount of energy expended by different individuals to perform the same task varies. MET levels are affected by environmental factors and/or by body weight and efficiency in performing tasks. For example, the average energy cost for walking four miles per hour might be 5 METs. The MET level for the same task, however, would be different for someone wearing high heels, a B/K amputee, an athlete or an obese individual. MET levels are most commonly measured using the functional graduated exercise tolerance test.~~

~~(c) The New York Heart Association has also established a functional class system. The following table shows the correlation between approximate MET level and the New York Heart Association's functional class system.~~

~~(1) Functional Classification.~~

~~(A) **Class I.** No limitations, or symptoms during ordinary activities. Little or no vocational restrictions. MET = 7 & up. VO2 = 24.5 & up.~~

~~(B) **Class II.** Slight limitations. Symptoms with ordinary activity. Comfort at rest. Can tolerate many jobs. MET = 5-6. VO2 = 17.5 - 21.0.~~

~~(C) **Class III.** Marked limitations. Symptoms with less than normal activity. Can tolerate some jobs. MET = 3-4. VO2 = 10.5 - 14.0.~~

~~(D) **Class IV.** Discomfort with any activity. May be able to tolerate some sedentary work. MET = 1-2. VO2 = 3.5 - 7.0.~~

~~(2) It is vital the counselor recognize the degree of functional impairment. The counselor will carefully assess and plan when possible for the remediation of physiological deconditioning, behavior patterns and maladaptive responses to stress, poor nutritional habits, alcohol abuse, and smoking.~~

~~(3) The counselor will be aware the MET level reported by the physician represents the highest level of activity which can be tolerated without symptoms. The counselor will discuss specific limitations and job tasks with the physician as well as relating MET level to tasks to be performed.~~

612:10-5-9. Cerebral palsy [REVOKED]

~~Cerebral palsy manifests itself in a wide range of functional limitations ranging from extremely severe limitations affecting virtually all functional aspects of the individual's life to very mild limitations causing minor inconvenience. Both the type and severity of cerebral palsy significantly impact the functional limitations involved. In identifying the presence and degree of impediment to employment, limitations must be considered as they relate to the ability to perform work related tasks. Individuals with severe cerebral palsy require more energy in simple job tasks because of spasticity and lack of motor control. The ability to work full time becomes questionable due to fatigue.~~

612:10-5-10. Deafness and hearing loss [REVOKED]

~~(a) **Documentation of deafness or hearing loss.** Documentation of deafness or hearing loss is obtained from reports written by the appropriate qualified professional in accordance with State licensure laws. The counselor should ascertain as soon as possible the need for an interpreter because of the great variance in expressive and receptive communication. Individuals applying for services on the basis of deafness or hearing impairment will be evaluated, using existing records to the maximum extent possible and appropriate, to determine eligibility, priority group placement, and rehabilitation service needs.~~

~~(b) **Method to determine degree of hearing loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed in (1) through (4) of this Subsection. The case record must document that the method chosen provides the most accurate evaluation of functional hearing level for the individual.~~

~~(1) Average hearing loss, which is determined by computing the average of the pure tone thresholds for each ear at 500 Hz, 1000 Hz, 2000 Hz, and 4000 Hz.~~

~~(2) Speech Recognition Threshold, which is determined by use of a phonetically balanced word list administered at the most comfortable level (MCL) for the individual.~~

~~(3) Speech discrimination or word recognition score, which is determined by use of a phonetically balanced word list administered at the most comfortable level (MCL) for the individual.~~

~~(4) Articulation index, which is determined by using the Count the dot Audiogram Form, counting the number of dots falling below the hearing response curve.~~

~~(c) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (1) through (4) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates that the hearing loss is progressive and that the progression is substantial enough to result in an impediment to employment.~~

~~(1) **Average hearing loss.** An individual is considered to have a qualifying disability based upon average hearing loss when:~~

~~(A) the hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or~~

~~(B) the hearing loss in the better ear is 30 dB or greater.~~

~~(2) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:~~

~~(A) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or~~

~~(B) the speech reception threshold in the better ear is 30 dB or greater.~~

~~(3) **Speech discrimination or word recognition score.** An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less.~~

~~(4) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.~~

~~(d) **Evaluation of need for visual examination.** Clients with a disability of deafness or hearing loss must be carefully evaluated for a visual examination since acute vision is of great importance to persons with hearing loss. In those situations where a visual deficit is indicated by:~~

~~(1) medical records;~~

~~(2) a statement by the client and/or family; or~~

~~(3) observations of the counselor during initial or subsequent interviews which were noted in the case recording, a visual examination will be obtained unless adequate visual records can be obtained to make this evaluation.~~

612:10-5-11. Dental and maxillofacial conditions [REVOKED]

~~For a dental, maxillofacial, or temporomandibular joint condition to meet eligibility criteria, it must result in a substantial impediment to employment. Supervisory review is required of any eligibility determination in which the primary disability is dental. Treatment of any of these conditions may also be provided under intercurrent illness policy. Treatment may be provided when:~~

~~(1) necessary to correct or substantially modify a condition which is stable or slowly progressive and constitutes an impediment to employment; and~~

~~(2) when such correction or modification may reasonably be expected to eliminate or reduce the impediment to employment within a reasonable length of time.~~

612:10-5-12. Diabetes [REVOKED]

~~(a) Functional limitations vary within the diabetic population depending on the type of diabetes and degree of control which can be maintained. It is important for the counselor to realize severe limitations are often posed by complications rather than by the diabetes. Common symptoms and limitations include:~~

~~(1) Weakness, frequent thirst, weight loss, excessive urination;~~

~~(2) Tendency toward insulin shock or ketoacidotic coma;~~

~~(3) Susceptibility to local infections and ulcerations;~~

~~(4) Mobility problems caused by peripheral vascular involvement;~~

~~(5) Impairments in mobility, speech, and other functional capacities due to strokes;~~

~~(6) Loss of visual acuity due to retinopathy;~~

~~(7) Pain, coldness, tingling and numbness in the lower extremities due to peripheral neuropathy;~~

~~(8) Irregular absorption of food leading to "diabetic diarrhea."~~

~~(b) The degree to which such symptoms are impediments to employment vary as do the limitations themselves. In identifying impediments to employment, the counselor determines the degree to which the particular limitations impede vocational activities. The extent to which activities involved in the client's vocation aggravate the condition is significant.~~

~~(c) If the client's condition is under control from treatment through a family practitioner, diagnostic information from this source can be used to determine eligibility. The client will be offered an ophthalmological examination at the time of the application and will be offered a re-examination on a yearly basis. This examination should in no way delay the determination of eligibility or the planning of rehabilitation services.~~

~~(d) It is recommended all insulin dependent diabetics attend diabetic education training as part of their IPE. If diabetic education training is provided, a separate intermediate objective addressing this service must be included on the IPE. Diabetic education training is considered personal adjustment training and is not subject to financial status.~~

612:10-5-13. Drug dependency [REVOKED]

~~(a) To establish functional limitations, both medical and psychological records will be obtained.~~

~~(b) Functional limitations vary among drug dependent individuals, depending upon type(s) of drug(s) abused, length of drug involvement, age at onset of compulsive drug use, psychological profile at onset of drug involvement and medical complications.~~

~~(c) Drug dependent individuals, especially heavy compulsive users, are often described as immature, suffering from various kinds and degrees of psychopathology, unwilling to face and seek solutions to problems other people solve, alienated and/or suffering from personality disorders. Drug related problems may have an impact on the vocational adjustment of the individual and be manifested differently in different individuals. The counselor needs to explore the following:~~

~~(1) Is the applicant able to work under supervision?~~

~~(2) Does the individual become angered easily? Has he/she ever walked off a job or school?~~

~~(3) Is the individual sleeping late or consistently late for work or school?~~

~~(4) Has the applicant been fired from jobs? Why?~~

~~(5) Has the individual been able to obtain work skills, seek employment, conduct interviews, and hold jobs?~~

~~(6) Has the applicant had difficulties with coordination and/or concentration because of being under the influence of drugs?~~

~~(7) Have the applicant's periods of employment been sporadic and of short duration because of drug use?~~

~~(d) Clients who are accepted on the basis of drug abuse, must be enrolled in a treatment or maintenance program. Those individuals who are free of drug use for two or more years will not be considered eligible based on a primary disability of drug dependency.~~

612:10-5-14. Epilepsy [REVOKED]

~~(a) Epilepsy is a disturbance of brain function which may be manifested by episodic impairment or loss of consciousness. It can be congenital or acquired. Functional limitations vary significantly depending on factors such as type of seizures, seizure frequency, seizure pattern (time of the day which seizures occur), seizure consequence (recovery time), presence or absence of an aura, degree of psychological maladjustment associated with the disorder, and side effects of anticonvulsant medications.~~

~~(b) The impediment to employment must be identified by considering the impact of the functional limitations described in (a) of this Section on employment outcome. It varies from individual to individual based on the degree and severity of the functional limitations when considered with the individual's employment assets.~~

612:10-5-15. Facial and disfigurement conditions [REVOKED]

~~Individuals with minor facial or disfigurement conditions presenting minimal public reaction are not considered eligible based on this condition alone. Counselors will determine the implications of these conditions toward the client's vocational success by observation, social adjustment, past employment experience and consideration of related psychological factors. Psychological evaluations can be utilized to assist in assessing the functional limitations. The extent to which the client is impeded in securing and holding suitable employment due to disfigurement is the determining factor for eligibility.~~

612:10-5-16. Hernia [REVOKED]

~~A person with a hernia or herniae is eligible for services if this condition constitutes an impediment to employment. If this condition can be corrected by surgical procedures, the individual can be considered for correction of the hernia, counseling, guidance, and placement. The client will not be eligible for training unless the residuals constitute a substantial impediment to employment.~~

612:10-5-17. Learning disabilities [REVOKED]

~~(a) **Definition.** "Specific learning disability" is a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, spell, or do mathematical calculations. The term includes conditions such as perceptual dysfunction, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include individuals who have learning problems that are primarily the result of visual, hearing, mental retardation, emotional disturbance, environmental, cultural, or economic disadvantage. If the individual's learning problems appear to be caused by some other disability, that disability will be considered the primary disability.~~

~~(b) **Diagnosis.** Placement evaluations used by the school for students eligible under IDEA will be used when available and appropriate. If reports are incomplete or unavailable, the client will be scheduled for a complete evaluation. A neuropsychological evaluation is scheduled only when there is sufficient evidence to suggest a neurological dysfunction. To determine eligibility of an individual based on a learning disability, the counselor will obtain the following in addition to the standard diagnostic information:~~

~~(1) Educational history, including special placement.~~

~~(2) Confidential records of students currently enrolled in school.~~

~~(3) Other existing pertinent data, such as reports of previous evaluations and cumulative records.~~

~~(c) **Eligibility.** It is the counselor's responsibility to apply the restrictions imposed on the client to the world of work (in view of work history, education and other related items), to determine the existence of an impediment to employment resulting from functional limitations. Individuals must meet one of the following three criteria:~~

~~(1) Have a marked discrepancy between verbal and performance intellectual level; or~~

~~(2) Function at least five grade or age equivalency levels below their expected grade level in specific developmental skill area(s) as measured by appropriate standardized testing; or~~

~~(3) Be diagnosed or identified as having a specific learning disability with resulting impairments.~~

612:10-5-18. Mental disorders [REVOKED]

~~(a) To be eligible for services based on a psychiatric disability, the individual's condition must have been diagnosed by a licensed or certified professional trained and experienced in the diagnosis of mental illness.~~

~~(b) The counselor will obtain evidence of the client's vocational strengths and functional limitations. When considering the individual's limitations, the counselor and client, or as appropriate, the client's authorized representative will determine what accommodations an individual with Serious Mental Illness (SMI) will need, such as part-time school or work, job site support from a job coach, and/or off site support services. Treatment must be incorporated as a service in the IPE for individuals with a diagnosis of mental illness. The descriptions of mental disorders presented in Paragraphs (1) through (5) of this Subsection are in general conformance with the criteria described in the latest version of the Diagnostic and Statistical Manual. Where there is a discrepancy, the criteria in the latest version of the Diagnostic and Statistical Manual are to be followed.~~

~~(1) **Psychotic disorders (Psychosis).** This is a general term for any major mental disorder characterized by psychotic symptomatology such as delusions, hallucinations, and disorganized thinking, speech or behavior. Examples of psychotic disorders include schizophrenia, delusional disorders, and schizoaffective disorders.~~

~~(2) **Mood disorders.** This diagnostic category includes, but is not limited to, depressive disorders (major depression and dysthymia), bipolar disorders, and other mood disorders due to general medical condition.~~

~~(3) **Anxiety disorders.** Anxiety disorders are characterized by levels of anxiety which are perceived to be beyond the individual's control. Symptoms can cause significant impairment in major life activities. Examples of anxiety disorders may include but are not limited to phobias, panic disorders, obsessive-compulsive disorders, and post-traumatic stress disorders.~~

~~(4) **Personality disorders.** The diagnostic criteria refer to behaviors or traits characteristic of the person's recent (past year), and long term functioning since early adulthood. The diagnosis is to be made only when the characteristic features are typical of the person's long term functioning and are not limited to discrete episodes of illness. Those individuals with mild character or behavior problems, or whose mental problems are situational in nature and are transient, are not eligible for rehabilitation services.~~

~~(5) **Eating disorders.** Anorexia Nervosa and Bulimia are disorders characterized by self-induced weight loss with a morbid fear of obesity. The disorders primarily affect females in adolescence or early adulthood. The etiology of these disorders is unknown but social factors tend to play an important role.~~

~~(A) Individuals who suffer from Anorexia or Bulimia do not complain of weight loss, are resistant to treatment, and often identified as a result of intercurrent illness or because of complaints about other symptoms. These conditions can be severe and life threatening if not treated.~~

~~(B) Diagnosis of eating disorders will be contained in psychological reports and medical records to rule out other complications. Individuals are not to be coded as being anorexic or bulimic unless they meet the criteria described in the latest version of the Diagnostic and Statistical Manual.~~

~~(C) Treatment of an eating disorder is the major service offered to clients who suffer from this condition. Once the treatment objective is obtained and the vocational restrictions are removed, the client is no longer eligible for services unless another residual disability is present. A medical consultant's review will be obtained before treatment of this condition is provided with DVR and DVS funds.~~

612:10-5-19. Mental retardation [REVOKED]

~~"Mentally retarded" means significantly below average general intellectual functioning beginning in the developmental period and associated with impairment in adaptive behavior.~~

~~(1) **Diagnosis.** Placement evaluations used by the school for students eligible under IDEA will be used when available and appropriate. If reports are incomplete or unavailable the client will be scheduled for a complete psychological battery to be administered by a licensed or certified physician, psychologist or a DVR or DVS Psychological Assistant. In addition to standard diagnostic information, the counselor will obtain the following:~~

~~(A) Educational history including special placement;~~

~~(B) Confidential records of students currently enrolled in school; and~~

~~(C) Other existing pertinent data, such as reports or previous evaluations and cumulative records.~~

~~(2) **Eligibility.** Individuals having an I.Q. of 69 or below, as measured by an individual clinical intelligence test , will be considered to have a substantial disability. For individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the mentally retarded range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the mentally retarded range of~~

~~ability. The counselor will record the analysis of the documentation, and the rationale for this decision in a case narrative. In cases where an individual is accepted as mentally retarded in the I.Q. range above 69, the counselor must also provide supportive documentation regarding educational achievement, emotional adjustment, social maturity and other functional limitations which would demonstrate the individual is functioning at the retarded level. There is not a lower level of I.Q. which determines either the eligibility or ineligibility of an individual for rehabilitation services. In evaluating individuals who have low I.Q. levels, especially those in severe to profound ranges, the counselor will consider whether the individual could function in employment with appropriate long-term supports on and off the job site. Situational assessments could assist the counselor in determining the most suitable supported employment placement as well as to determine on going support service needs, including the need for rehabilitation technology.~~

612:10-5-20. Orthopedic conditions [REVOKED]

~~(a) A musculoskeletal condition, amputation, congenital absence, or deformity which limits the individual's mobility or ability to participate in day-to-day activities may constitute a substantial impediment to employment. Orthopedic disabilities are varied and some of the more common disabilities cause few limitations for the client.~~

~~(b) In determining eligibility of an individual on the basis of an orthopedic disability, the counselor will carefully evaluate the limitations placed on the individual by the disability in relation to the work of the client and potential for work. The counselor will also be alert for those conditions correctable through medical treatment.~~

612:10-5-21. Renal disease [REVOKED]

~~(a) Renal failure is a condition in which the kidneys inadequately remove waste products from the blood, and the body's chemical balance is disturbed in a life-threatening manner. Renal failure may be either reversible or irreversible (end stage renal failure).~~

~~(b) End Stage Renal Disease (ESRD) without treatment results in death. The functional limitations are due to the mode of treatment as well as the ESRD itself. Persons on hemodialysis may frequently be debilitated as toxins build up in the blood prior to dialysis, and as a result of treatment.~~

~~(c) There are also limitations due to the emotional impact of dialysis. Dependence on a machine for a basic life function frequently prompts depression, anxiety, self-deprecation, diminished sexual activity, and lack of motivation. Since the kidneys serve many other metabolic functions which are not replaced by dialysis, individuals on dialysis are more prone to bone problems and anemia. One additional major problem with Continuous Ambulatory Peritoneal Dialysis (CAPD) is the frequency of peritoneal infections.~~

612:10-5-22. Height and obesity [REVOKED]

~~(a) **Height.** In determining whether a person will be accepted for services on the basis of height alone, a great deal will depend upon the personality of the individual and vocational factors. The counselor does not consider shortness of stature an impediment to employment if the person is taller than 52 inches.~~

~~(b) **Obesity.** Obesity is an increase in body weight beyond the limitations of skeletal and physical tolerance as the result of excessive accumulations of fat in the body. The cause of obesity is unknown, but several factors may contribute to an individual's obesity. Among these are social factors, endocrine and metabolic factors, psychological factors, genetic factors, developmental factors and physical activity. Diagnosis of obesity is relatively easy since it is observable and can be quantified by weight and height measurements. The determination of eligibility for vocational rehabilitation services based on a disability of severe obesity (100% over normal weight) will be made on an evaluation of the individual's ability to participate in the activities of daily living (walking, driving, use of public transportation) which might be required if the individual was employed. Severe obesity (100% over normal weight) as defined by the Metropolitan Life Insurance Company is considered as the appropriate minimum criteria.~~

~~(c) **Treatment plan.** Any vocational plan for a person who is obese must include some type of treatment plan. While the prognosis for treatment of obesity is guarded and may cause other complications, untreated the disability tends to progress. Any treatment program authorized by the agency must be monitored by a licensed dietician or a physician skilled in weight reduction. DRS will not approve any radical surgery i.e., bypass or stapling of the stomach, as those treatment plans are beyond the scope of VR services.~~

612:10-5-23. Speech defects [REVOKED]

~~Both the physiological and psychological aspects of the disability must be considered. Speech defects are placed in one of two categories, organic or functional.~~

~~(1) The organic speech defect is a physical condition and involves those persons having a speech defect caused by hearing loss, cleft palate, hare lip, cerebral palsy, stroke or other deformities of the mouth or throat. This type of speech defect is usually congenital or traumatic in nature. Some individuals in these categories may be helped through surgical correction, and speech therapy over an extended period of time.~~

~~(2) The functional group includes the speech problems of stammering, stuttering, or other articulation problems. This type of speech problem is often caused by some emotional problem or is a learned condition.~~

612:10-5-25. Acquired brain injury [REVOKED]

~~(a) **Acquired brain injury defined.** Acquired brain injury is an injury to the brain which is not hereditary, congenital, or degenerative. It is an injury which occurred after birth, and does not include brain injuries induced by birth trauma. The injury commonly results in a change in neuronal activity which~~

~~affects the physical integrity, the metabolic activity, or the functional ability of injured cells. Causes of acquired brain injury include:~~

~~(1) external forces applied to the head and/or neck (e.g. traumatic brain injury with or without skull fracture);~~

~~(2) anoxic/hypoxic injury (e.g. cardiopulmonary arrest, carbon monoxide poisoning, airway obstruction, hemorrhage);~~

~~(3) intracranial surgery;~~

~~(4) vascular disruption (e.g. arteriovenous malformation (AVM), thromboembolic events, fat emboli);~~

~~(5) infectious diseases;~~

~~(6) intracranial neoplasms;~~

~~(7) metabolic disorder (e.g. hypo/hyperglycemia, hepatic encephalopathy, uremic encephalopathy);~~

~~(8) seizure disorders; and~~

~~(9) toxic exposure (e.g. substance abuse, ingestion of lead and inhalation of volatile agents).~~

~~(b) **Service guidelines.** The third criterion of eligibility states that the individual must require vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment. The need for consultation by an assessment team is indicated when the VR Professional is in doubt as to:~~

~~(1) whether the requested services are necessary to substantially modify a physical or mental condition which is stable or slowly progressive;~~

~~(2) whether the physical or mental condition constitutes an impediment to employment; and~~

~~(3) whether the service can reasonably be expected to eliminate or reduce the impediment to employment within a reasonable length of time.~~

612:10-5-26. Visual [REVOKED]

~~(a) **Applicability.** Ophthalmological or optometric records are secured in all cases. If eye pathology is suspected or diagnosed an ophthalmological report must be obtained. Individuals determined as qualifying for services because of the primary disability of visual loss as described in this Section will be served by counselors in Visual Services. Following the initial investigation, if additional clarification is needed, the counselor will submit all available reports to the agency ophthalmological consultant for review and recommendations. All factors which constitute total visual efficiency are important to the counselor for determining eligibility. Total visual efficiency depends on visual acuity, peripheral vision, muscle function, depth perception and stereopsis. After considering these factors, the individual must be found to have at least a 25% loss of total visual efficiency with best correction, or there must be evidence the condition is progressive and will soon reach the visual loss described above. Anyone or all of the following factors may be used to determine whether a 25% loss of total efficiency exists.~~

~~(b) **Central visual acuity (Snellen method or equivalent).** Acuity of 20/60 or less in the better eye after best correction (in the case of differences of acuity between reading and distance use the greater loss).~~

~~(c) **Loss of depth perception or stereopsis.**~~

~~(1) **Eligibility on the basis of depth perception loss.** When defining eligibility based on depth perception alone, it is generally accepted a total loss of depth perception would not constitute a 25% loss of visual efficiency. Other factors to consider include: Is the client's loss of depth perception acute? Did the client recently lose his or her depth perception? Did the client's past vocational experience require good depth perception? If the client is currently working, does his/her present vocation require good depth perception? After considering these factors the counselor will determine if there are functional limitations to the extent the individual would be prevented from obtaining, retaining or preparing for employment.~~

~~(2) **Eligibility based on loss of stereopsis.** Stereopsis is defined as the blending into one picture two images of an object seen from slightly different points of view so as to produce the impression of relief and solidity. This type of loss usually results from suppression of vision in one eye due to alternating exotropia, esotropia, hypertropia or a difference in the refractive power of the two eyes so great that separate images cannot be fused. When determining eligibility based on lack of stereopsis the counselor will take into account most of the factors used in determining eligibility based on loss of depth perception. One major difference is stereopsis cannot be learned. In other words, if an individual does not have binocular vision, it is impossible for the individual to have stereopsis. From a functional standpoint, stereopsis is considerably different from depth perception. The individual can still do many jobs with various degrees of depth perception yet these same jobs may have certain steps that require acute stereopsis. Thus an employee losing the stereopsis part of his visual function would be at risk for injuring himself or other workers or might be considered as a target for termination.~~

~~(3) **Limited peripheral vision.** This is restriction of visual fields by 25% or more as documented by a formal visual field examination. The examination should report the qualitative percentage of visual field loss and/or remaining percentage of visual efficiency.~~

~~(4) **Diplopia (Double Vision).** There are different degrees of double vision. The type of double vision most disabling is the type which manifests itself in the primary direction of gaze.~~

~~(5) **Aphakia.** In cases of binocular aphakia the central visual efficiency of the better eye will be accepted at 75% of its value (25% loss of visual efficiency) and in monocular aphakia the central visual efficiency will be accepted at 50% of its value (50% loss of visual efficiency). Individuals with intraocular lens implants are not considered to have a visual disability as a result of an aphakic condition.~~

~~(6) **Color deficiency.** When total absence of color discrimination or red-green deficiency exists it will be considered a disability. Supervisory approval is necessary for establishing an impediment to employment when the disabling condition is a red-green deficiency.~~

~~(d) **Reevaluation.** When physical restoration results in a substantial reduction in the level of disability, the case is~~

~~re-evaluated and documentation placed in the case record before providing any additional services other than counseling, guidance and job placement.~~

~~(e) **Hearing evaluation.** Individuals who have been identified as "legally blind" will be carefully evaluated regarding the need for a hearing evaluation. When a hearing deficit is indicated by a medical examination report, statement of the client and/or family, or observation of one of the professional staff members working with the individual, it is noted in the case record. The counselor will make arrangements for a hearing examination unless existing records are adequate and appropriate for this assessment.~~

612:10-5-27. Determining severity of disability [REVOKED]

~~The Rehabilitation Act mandates that persons with severe disabilities be given priority for services, especially under an order of selection. Diagnostic and evaluation reports in the case must document that an individual meets the definition of individual with a severe disability given in 612:10-1-2 before that individual can be classified as having a severe disability. However, an individual who is a recipient of Social Security Disability Insurance and/or Supplemental Security Income at any time during the rehabilitation process will also be considered to have a severe disability.~~

SUBCHAPTER 7. VOCATIONAL REHABILITATION AND VISUAL SERVICES

PART 1. SCOPE OF VOCATIONAL REHABILITATION AND VISUAL SERVICES

612:10-7-2. Counselor's responsibilities

(a) The counselor is responsible for contacting each referral within 30 days of ~~as soon as possible but within 30 days, after~~ receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to applicants who are deaf or non-English speaking.

(b) The rehabilitation counselor is responsible for the determination of an individual's eligibility to receive services from DVR or DVS. Individuals who are legally blind are to be referred to the appropriate rehabilitation teacher for determination of eligibility for the rehabilitation teaching program. In cases where the counselor has difficulty in making an eligibility determination, the counselor will consult with the supervisor. For further clarification, the case will be reviewed by the field coordinator for a decision. All cases referred must be accompanied by all available medical information and sufficient social and vocational information. The rehabilitation teacher is responsible for the determination of an individual's eligibility to receive services from the Rehabilitation Teaching Program. The counselor will apply eligibility criteria to all applicants in an equitable manner, without regard to race, age, sex, color, creed, national origin or disability type.

(c) The counselor always considers the primary and basic vocational rehabilitation service as counseling and guidance with job placement. Any service beyond this must be justified as necessary to compensate, correct or circumvent an impediment to employment. Every IPE must include a plan of counseling and guidance services. Regular documentation of counseling sessions will be included in every DVR and DVS case.

(d) The rehabilitation counselor is to ensure that the client is a full participant in the decisions that are made concerning his or her vocational rehabilitation. This responsibility is carried out by providing the individual with as much relevant information as is available so that the individual, and/or the individual's authorized representative, can exercise informed choice consistent with the Department's policies. The minimum information concerning service choice to be supplied includes:

(1) service cost;
(2) available service providers;
(3) service accessibility;
(4) expected duration of services;
(5) consumer satisfaction with the services in question, to the extent that such information is available;
(6) qualifications of potential service providers;
(7) the types of services offered by the potential service providers;
(8) the degree to which services are provided in integrated settings; and
(9) outcomes achieved by individuals working with the service provider, to the extent such information is available.

(e) The individual will be notified in writing of any adverse determination made by professional staff concerning that individual's case. This notification will be made in a timely manner, and in a manner that supports the individual's right to due process.

(f) The counselor will complete a financial status determination form prior to the provision of any service (other than exempt services listed in 612:10-3-4) to determine if the client will be required to participate in the cost of services.

(g) An individual must be in status 06, 16 through 24 or 32 before any non-diagnostic service is authorized. A non-diagnostic service authorization will not be issued until after the service has been included in the IPE or amendment.

(h) All Department authorizations are made in compliance with the state purchasing policy under legal authority of the Director or by an employee to whom the Director has delegated such authority. The counselor will verify the client has received any tools, equipment, or durable medical goods purchased with DVR and DVS funds and, when appropriate, complete the Receipt for Equipment and Title Agreement.

(i) The counselor will inform each individual of his or her rights and responsibilities as an applicant or client of DVR and DVS. Cross reference 612:10-7-150

(j) The Department of Rehabilitation Services (DRS) has an obligation under state and federal law to provide services in a fair and impartial manner. State Ethics Commission Rules state that the proper operation of state government requires

that the state employee be independent and impartial; that state employees not use state office to obtain private benefits; that a state employee must avoid action which creates the appearance of using state office to obtain a private or inappropriate benefit; and that state employees exercise their powers without prejudice or favoritism.

(k) The counselor is limited in determining eligibility for services for friends or relatives. At the time of application or referral, if in the counselor's judgment, the individual is familiar to the point of friendship, the counselor must immediately disclose this relationship to their supervisor in writing and obtain approval before determining eligibility. If the applicant is related by blood or marriage, the counselor must immediately refer the case to another counselor, if available. If no other counselor is available, the counselor must notify their supervisor immediately for appropriate case assignment. The counselor should also disclose the potential conflict of interest to the applicant and explain the reason for the potential delay of eligibility determination. The counselor must not only be impartial in the determination of eligibility but also act so that there can be no question of impartiality.

612:10-7-4. Basic eligibility requirements for vocational rehabilitation services

(a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:

(1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;

(2) can benefit in terms of an employment outcome from vocational rehabilitation services; and

(3) requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

(b) An individual who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act [42 U. S. C. 401 et seq. and 1381 et seq.] shall be:

(1) considered to have a severe disability under the order of selection; and

(2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.

(c) Determinations by other agencies, particularly education agencies, regarding whether an individual has an impairment or is an individual with a severe disability are to be used to the extent appropriate, available and consistent with the Rehabilitation Act.

(d) Every person must be evaluated individually regarding history, prognosis and functional limitations to determine if the individual can benefit from rehabilitation services in terms of an employment outcome.

(e) Some conditions have unique criteria that must be considered when determining eligibility.

(1) **Alcoholism/Drugs.** Eligibility documentation for vocational rehabilitation services requires both medical and psychological records. Clients who are accepted on the basis of alcoholism and/or drug dependency must be enrolled in a treatment or maintenance program and be willing to undergo random alcohol/drug screening at the counselor/employer's discretion. Those individuals who are alcohol/drug free for two or more years will not be eligible on a primary disability of alcoholism/drug dependency.

(2) **Allergies/Asthma.** Only the most serious allergies/asthmatic condition requiring continuous medical intervention will be considered eligible for services.

(3) **Deafness and Hearing Loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual.

(A) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (1) through (4) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) **Average hearing loss.** Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or

(II) The hearing loss in the better ear is 30 dB or greater.

(ii) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:

(I) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or

(II) the speech reception threshold in the better ear is 30 dB or greater.

(iii) **Speech discrimination or word recognition score.** An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less.

(iv) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.

(B) **Evaluation of need for visual examination.** Clients with a disability of deafness or hearing loss will be offered a visual exam annually unless adequate existing records are available.

(4) **Diabetes.** The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone will not be considered eligible. Eligible clients will be offered a visual exam at least once per year. It is recommended all insulin dependent diabetics attend diabetic education training as part of their IPE. If diabetic education is provided, a separate intermediate objective addressing this service must be included on the IPE.

(5) **Facial and Disfigurement Conditions.** Treatment of any of these conditions may also be provided under intercurrent illness policy. Treatment may be provided when:

(A) it is necessary to correct or substantially modify a condition which is stable or slowly progressive;

(B) such correction or modification may reasonably be expected to eliminate or reduce the impediment to employment within a reasonable length of time.

(6) **Learning Disabilities.** Individuals must meet **one** of the following three criteria to be identified as learning disabled:

(A) Have a marked discrepancy between verbal and performance intellectual level;

(B) Be diagnosed or identified as having a specific learning disability from the local educational system; or

(C) When the individual's achievement on individually administered, standardized test in reading, mathematics or written expression is substantially below that expected for age, schooling and level of intelligence (DSM IV).

(7) **Mental Disorders.** Treatment must be incorporated as a service in the IPE for individuals with a diagnosis of mental disorder. Comparable benefits will be used when available.

(8) **Mental Retardation.** To be eligible, individuals having an I.Q. of 69 or below, as measured by an individual clinical intelligence test, will be considered to have a substantial disability. For individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the mentally retarded range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the mentally retarded range of ability.

(9) **Height.** To be eligible, a person under 52 inches must be unable to participate in activities of daily living.

(10) **Obesity.** To be eligible, a person must be 100% over normal weight using the designated weight chart and unable to participate in activities of daily living. Any radical surgery i.e., bypass or stapling of the stomach, treatment plans are beyond the scope of VR services. Any vocational plan for a person who is obese must include some type of treatment plan. A licensed dietician or a physician skilled in weight reduction must monitor any treatment program authorized by the agency.

(11) **Visual.** The individual must be found to have at least a 25% loss of total visual efficiency with best correction, or there must be evidence the condition is progressive and will soon reach the visual loss described above. Any one or all of the following factors may be used to determine whether a 25% loss of total efficiency exists.

(A) **Central visual acuity (Snellen method or equivalent).** Acuity of 20/60 or less in the better eye after best correction (in the case of difference of acuity between reading and distance use the greater loss).

(B) **Loss of depth perception or stereopsis.**

(i) **Eligibility on the basis of depth perception loss.** When defining eligibility based on depth perception alone, it is generally accepted a total loss of depth perception would not constitute a 25% loss of visual efficiency. Other factors to consider include: Is the client's loss of depth perception acute? Did the client recently lose his or her depth perception? Did the client's past vocational experience require good depth perception? If the client is currently working, does his/her present vocation require good depth perception? After considering these factors the counselor will determine if there are functional limitations to the extent the individual would be prevented from obtaining, retaining or preparing for employment.

(ii) **Eligibility based on loss of stereopsis.** Stereopsis is defined as the blending into one-picture two images of an object seen from slightly different points of view so as to produce the impression of relief and solidity. This type of loss usually results from suppression of vision in one eye due to alternating exotropia, esotropia, hypertropia or a difference in the refractive power of the two eyes so great that separate images cannot be fused. When determining eligibility based on lack of stereopsis the counselor will take into account most of the factors used in determining eligibility based on loss of depth perception. One major difference is stereopsis cannot be learned. In other words, if an individual does not have binocular vision, it is impossible for the individual to have stereopsis. From a functional standpoint, stereopsis is considerably different from depth perception. The individual can still do many jobs with various degrees of depth perception yet these same jobs may have certain steps that require acute stereopsis. Thus an employee losing the stereopsis part of his visual function would be at risk for injuring himself or other workers or might be considered as a target for termination.

(iii) **Limited peripheral vision.** This is restriction of visual fields by 25% or more as documented

by a formal visual field examination. The examination should report the qualitative percentage of visual field loss and/or remaining percentage of visual efficiency.

(iv) **Diplopia (Double Vision).** There are different degrees of double vision. The type of double vision most disabling is the type that manifests itself in the primary direction of gaze.

(v) **Aphakia.** In cases of binocular Aphakia the central visual efficiency of the better eye will be accepted at 75% of its value (25% loss of visual efficiency) and in monocular Aphakia the central visual efficiency will be accepted at 50% of its value (50% loss of visual efficiency). Individuals with intraocular lens implants are not considered to have a visual disability as a result of an aphakic condition.

(vi) **Color deficiency.** When total absence of color discrimination or red-green deficiency exists it will be considered a disability. Supervisory approval is necessary for establishing an impediment to employment when the disabling condition is a red-green deficiency.

(12) **Hearing evaluation.** Individuals who have been identified as "legally blind" will be carefully evaluated regarding the need for a hearing evaluation. When a hearing deficit is indicated by a medical examination report, statement of the client and/or family, or observation of one of the professional staff members working with the individual, it is noted in the case record. The counselor will make arrangements for a hearing examination unless existing records are adequate and appropriate for this assessment.

(13) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

612:10-7-6. Assessment for determining eligibility

(a) To determine whether an individual is eligible for vocational rehabilitation services ~~and to assign an individual to a priority group in the order of selection~~:

(1) the counselor will use to the maximum extent possible and appropriate existing information that is current as of the date of the determination of eligibility or of the development of the IPE (for the purposes of this Section, current means that there has been no appreciable change in the individual's condition as described in the obtained documentation); and

(2) to the extent necessary provide appropriate assessments, including provision of goods and services during the assessment, to obtain additional documentation necessary to make the determination of eligibility and priority group assignment. The counselor will carefully evaluate the need to provide assistive technology devices and services or worksite assessments.

(b) The counselor will determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days after the individual has submitted an application for services. This time period may be extended only when unforeseen and exceptional circumstances beyond the control of the Department preclude completing the determination of eligibility within the 60 days and the individual agrees a specific extension of time is warranted as documented on the Need for Extension of Time to Determine Eligibility form; or a trial work period is needed to determine the individual's ability to benefit from VR services.

(c) The counselor must carefully assess the usefulness of any records obtained based upon the nature of the disability; the relevance and completeness of information contained in the records; and the nature and outcome of treatment, or other services, received by the client.

(d) Documentation that the individual has a disability which constitutes or results in an impediment to employment must come from professionals qualified in accordance with State law to diagnose the reported disability, except as provided in 612:10-7-4(b).

(e) Diagnosis and evaluation are to be provided only for determination of eligibility for VR services, priority group placement, and determination of VR service needs. DVR and DVS funds are not to be used to assist an individual in establishing eligibility for other programs.

(f) When necessary, diagnostic evaluations may be purchased at any time during the life of the case. Diagnostic procedures that require hospitalization must be approved by the program manager.

(g) If an individual is determined eligible, the VR counselor will notify the individual in writing ~~then update ORMIS using the Eligibility Data Entry form~~. If the individual is determined to be ineligible, counselor will close the case using the Notification of Case Closure form.

(h) A qualified rehabilitation professional can proceed with an assessment of eligibility if there is an obvious and/or observable disability. An interim decision based on an observable disability must be followed up with medical records.

612:10-7-8. Order of selection

(a) **Need for order of selection.** The Department, in consultation with the State Rehabilitation Council, has determined, due to budgetary constraints or other reasoned limitations, it cannot serve all individuals who are determined eligible for DVR and DVS services. ~~It is the policy of DRS to provide rehabilitation services to eligible individuals under an order of selection.~~ The Department consults with the State Rehabilitation Council regarding the:

(1) need to establish an order of selection, including any re-evaluation of the need;

(2) priority categories of the particular order of selection;

(3) criteria for determining individuals with the most severe disabilities; and

(4) administration of the order of selection.

(b) **Priority groups.** It is the policy of DRS to provide vocational rehabilitation services to eligible individuals under an order of selection. Under the order of selection, the Department has established four priority groups on the basis

of serving first those with the most severe disabilities. Every individual determined to be eligible for DVR and DVS services is placed in the appropriate priority group based upon the documentation used to determine eligibility and/or vocational rehabilitation needs. Selection and placement in a priority group is based solely upon the severity of the eligible individual's disability, and is not based upon the type of disability, geographical area in which the individual lives, projected type of vocational outcome, age, sex, race, color, creed, religion, or national origin of the individual. The priority groups are:

(1) **Priority Group 1.** Eligible individuals with the most severe disabilities. A most severe disability is a severe mental or physical disability resulting in serious limitations in three or more functional capacities and requiring multiple services over an extended period of time.

(2) **Priority Group 2.** Eligible individuals with severe disabilities resulting in serious limitations in at least, but not more than, two functional capacities and requiring multiple services over an extended period of time.

(3) **Priority Group 3.** Eligible individuals with severe disabilities resulting in serious limitations in one functional capacity and requiring multiple services over an extended period of time.

(4) **Priority Group 4.** Eligible individuals with disabilities not meeting the definition of individual with a severe disability.

(c) **Implementation.** Prior to the start of each fiscal quarter, or when circumstances require, the DRS Director will determine in which priority groups new Individualized Plans for Employment will be written and initiated. The Director may restrict the writing and initiation of new Individualized Plans for Employment within a priority group to cases having application dates falling on or before a specified date providing that all consumers in higher priority groups are being served. Considerations in making this determination will include, but not be limited to, the projected outcomes, service goals, expenditures, and resources available for each priority group. Projected costs and resources for each priority group will be based upon costs of current Individualized Plans for Employment, anticipated referrals, availability of financial resources, and adequacy of staffing levels. The Director will implement actions under the order of selection through written notice to DVR and DVS staff. The written notice will specify the implementation date of the action and direct DVR and DVS staff on how to handle cases by priority group and application date. DVR and DVS staff will inform each eligible individual on their caseloads:

(1) of the priority groups in the order of selection;

(2) of the individual's assignment to a priority group; and

(3) of the individual's right to appeal that assignment.

(d) **Closing and opening priority groups.** When all or part of a priority group is closed, designated cases within that priority group without a written IPE will be placed on a waiting list after the individual has been determined to be eligible. No IPE will be written for cases on the waiting list. Staff will continue to take applications, diagnose and evaluate all applicants to determine eligibility and vocational rehabilitation needs, find the individual eligible when documentation supports such a decision, then place each eligible individual's case in the appropriate priority group. If an eligible individual is placed in a closed priority group, his or her case will go on the waiting list and no IPE will be written or initiated. The DRS Director will notify DVR and DVS staff in writing when all or part of a closed priority group is opened. When this directive includes new applicants who are found eligible, individuals already on the waiting list within that same priority group will be given priority over new applicants. When all or part of closed priority groups are opened, staff will contact individuals on the waiting list to develop and implement their Individualized Plans for Employment using the priorities in Paragraphs (1) - (3) of this Subsection:

(1) contact individuals within the highest open priority group first, Priority Group 1 being the highest of all priority groups;

(2) within each opened priority group, staff will contact individuals on the waiting list in order of application date, earliest application date first; then

(3) staff will contact individuals whose cases will remain on the waiting list to explain how their cases will be handled.

(e) **Continuity of services.** Any individual with an IPE that existed prior to the date all or part of that individual's priority group was closed will continue to receive services as planned. Such an IPE may be amended if the changes are necessary for the individual to continue progress toward achieving an appropriate employment outcome, or are otherwise necessary within policy. Persons requiring post employment services will also be provided the necessary services regardless of priority group assignment.

(f) **Information and referral services.** Information and referral services will remain available to eligible individuals who are not in an open priority group. No IPE will be written to provide such services to these individuals.

PART 3. CASE PROCESSING REQUIREMENTS

612:10-7-33. Supervisory caseload reviews

(a) ~~Program managers are to~~Each programs manager ~~review~~reviews a sample of active cases each ~~fiscal year to ensure a uniform quality of work is maintained. Each supervisor will be responsible for setting a schedule for case reviews in his/her area. The results of case reviews are to be included in the performance evaluations of appropriate staff~~ production year. The purpose of these reviews is to monitor and contribute to the improvement of the quality of work being done on each caseload in accordance with Departmental policy, RSA regulations and ethical standards.

(b) The appropriate review form will be completed for each case reviewed in accordance with instructions. ~~The purpose of the case review is not only to check the quality of work but also to help the counselor improve his/her work. It is the responsibility of the individual program manager to discuss each case review with the counselor involved and to help make any necessary adjustments in the counselor's caseload~~

~~management practices~~ Each programs manager is responsible for setting a schedule of case reviews in his or her area. The results of the reviews for each caseload are to be used in evaluating performance of each vocational rehabilitation specialist and rehabilitation technician and as a basis for further performance development plan.

(c) ~~The regular case review will be supplemented by spot checks of individual cases as often as the supervisor deems necessary~~. In addition, periodic reviews of both active and closed ~~cases by the State Office~~ will be conducted by the State Office. The purpose of these reviews ~~will be~~is to ensure uniform application of agency policies and to identify areas for which in-service training may be needed. ~~State Office reviews are not intended to take the place of supervisory reviews.~~

PART 5. CASE STATUS AND CLASSIFICATION SYSTEM

612:10-7-50. Status 10 - accepted for services and IPE under development

(a) **Use of status 10.** An active case is defined as one which has been accepted as meeting the basic eligibility requirements and placed in one of the statuses 10 through 24. An individual who is placed in an order of selection priority group that is not currently being served will be placed in status 10 and held there pending further directives from the Director concerning opening or closing of priority groups. While an individual is in status 10, the comprehensive assessment is completed to provide a basis for the formulation of the client's IPE. The comprehensive assessment is used to determine the scope and nature of services to be provided to accomplish the vocational objective of the client. The counselor records activities during this period by individual entry or by summary recording at regular intervals on the case narrative form. Copies of pertinent case information will be shared with all DVR or DVS professionals involved in the case. Pertinent case information will also be shared with contracted vendors, when appropriate, with a release signed by the client. During the provision of services, the counselor and teacher will share pertinent information including narrative recording. If an IPE cannot be developed during this period, the client's case is closed in status 30 with a full explanation to the client and documentation as to the reason for closing the case. This documentation will be completed on the Notification of Case Closure form. The counselor may not find an individual ineligible for supported employment services because a resource for providing extended services cannot be identified. In this instance, the counselor will:

(1) accept the individual as eligible for VR services;

(2) plan VR services as appropriate, including the expected availability of extended services; and

(3) seek out and/or help in developing the needed extended services resource.

(b) **Case recording requirements.**

(1) **Notification of eligibility.** The VR counselor will discuss eligibility with the individual, and provide a written notification of eligibility to the individual. ~~After notifying the individual that he or she is eligible, the VR counselor will complete the Eligibility Data Entry form.~~

(2) **Comprehensive assessment.** A comprehensive assessment will be done in every case. It is conducted once the individual has been accepted as eligible for VR services. Additional assessments may be obtained for the comprehensive assessment to the extent information additional to that already obtained is necessary to determine the vocational rehabilitation needs of the individual and to develop the IPE. Existing information, and information supplied by the individual, or the individual's authorized representative, is to be used for the comprehensive assessment to the maximum extent possible. Rehabilitation technology will be used in the comprehensive assessment when necessary to assess and/or develop the capacities of the individual to perform in a work environment. The results of the comprehensive assessment and the VR Counselor's analysis of them will be recorded in a case narrative titled "Comprehensive Assessment". This case narrative will contain—reasonable justification of the employment goal and services that will be provided in the IPE, considering the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. For individuals who find selection of a vocational objective difficult because of unsuccessful or limited exposure to work, the counselor may refer the client to a Community Rehabilitation Provider (CRP) for additional assessments to establish a vocational goal. Employment and Retention (ER) contracts offer standardized, commercial assessments, work skills assessments, as well as short-term situational assessments in community settings. Employment and Retention contractors also provide job readiness services through work experience programs or Job Clubs, as well as benefits analysis to assure the individual understands the effect of work on public benefits.

(3) **The comprehensive assessment for supported employment.** In supported employment cases, the record must document, in a case narrative titled "Comprehensive Assessment", the counselor's determination that the client is an individual:

(A) for whom competitive employment has not traditionally occurred; or

(B) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(C) who, because of the nature and severity of the disability, needs intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work.

(4) **Referral.** The counselor refers the client to a supported employment provider to gather the information necessary to complete the comprehensive assessment, and authorizes the "Assessment and Determination of Needs" milestone. The provider will conduct situational assessments in community settings based on client choice and negotiations with the counselor, and in accordance

with their contract requirements. Results of the assessments will assist the client and counselor in establishing a vocational goal.

(c) **Development of the Individualized Plan for Employment.** The VR counselor will provide the eligible individual, or the individual's authorized representative, in writing and in appropriate mode of communication, with information on the individual's options for developing the IPE.~~, including:~~

(1) The required information will include the following:

(~~1~~A) information on the availability of assistance, to the extent determined to be appropriate by the eligible individual, or authorized representative, from a qualified VR counselor in developing all or part of the IPE, and the availability of technical assistance for this purpose;

(~~2~~B) a description of the required content of the IPE;

(~~3~~C) as appropriate:

(~~A~~i) an explanation of agency requirements for client participation in cost of services;

(~~B~~ii) additional information requested by the individual or authorized representative;~~ and~~

(~~C~~iii) information on the availability of assistance in completing DVR/DVS forms required in developing the IPE;~~ and~~

(iv) For cases involving Alcoholism/Drugs, Mental Disorders and Obesity, treatment must be incorporated as a service in the IPE (See 612:10-7-4(e)(1), (7) and (10) respectively).

(~~4~~D) a copy of a DRS publication addressing client's rights and responsibilities.

(2) For cases in an open priority group, the IPE must be completed and signed as soon as possible, consistent with the needs of the individual, but not more than 90 calendar days following the eligibility determination, unless the individual or the authorized representative and the VR or VS counselor jointly agree to an extension of time of a specific duration. The 90-day time frame for development of the IPE will be applied from the date a closed priority group is reopened.

(d) **Vocational objective.** The primary purpose in providing vocational rehabilitation services is to assist an eligible individual obtain appropriate competitive employment in an integrated setting consistent with the individual's informed choice. The choice of a vocational objective for an individual receiving vocational rehabilitation services must be based primarily upon the individual's strengths, resources, priorities, concerns, abilities, and capabilities.

(1) **Informed choice.** The vocational objective is to be chosen with the full participation of the client. The client's interests and informed choice determine his or her vocational goal to the extent these factors are consistent with the client's strengths, resources, priorities, concerns, abilities, and capabilities.

(2) **External conditions.** Factors such as the local labor market or local economy must also be taken into consideration. However, in most cases these factors cannot be used as the only basis upon which to determine whether a vocational objective is appropriate.

(3) **Currently employed individuals.** When post-employment is not appropriate, the individual's functioning in current employment must be judged against the basic eligibility criteria for vocational rehabilitation services. Services may be provided to an eligible individual who is employed when:

(A) the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, and capabilities; and

(B) vocational rehabilitation services are required to assist the individual to obtain an employment outcome consistent with the individual's strengths, resources, priorities, concerns, abilities, and capabilities.

(e) **Non-competitive vocational objectives.** The primary mission of DVR and DVS is to help eligible individuals achieve competitive employment in an integrated work setting. Therefore, careful consideration and planning are required when services are to be provided to achieve a long term goal of non-competitive employment.

(1) **Homemaker.** A homemaker is defined as a person whose primary work is performance of duties related to the upkeep and maintenance of a home. This work takes place in the individual's own home, without remuneration.

(A) The IPE can have a vocational objective of homemaker only when services will directly and substantially improve the individual's ability to perform the primary homemaking work activities for their home.

(B) Self-care activities are not sufficient to meet the definition of gainful occupation. The individual must not be receiving any type of assistance in performing primary homemaking duties.

(C) A vocational objective of homemaker can be established for only one person within the same household.

(2) **Unpaid family worker.** A vocational objective of unpaid family worker is appropriate when services will enable the individual to perform work without pay on a family farm or in a family business operated by one or more members of the client's family. The record must document how the services will substantially improve the productivity of the client and his/her contribution to the family farm or business.

612:10-7-51. Status 12 - IPE completed but services not initiated

(a) **Use of status 12.** A case is placed in status 12 following determination of eligibility, placement in an order of selection priority group currently being served, completion of the comprehensive assessment and the Individualized Plan for Employment (IPE) until services are actually initiated. The initial plan is a starting point subject to amendments as a result of changes (health, financial, etc.), availability of DVR and DVS funds, openings at facilities and schools, possibility of a

delay in a phase of the plan or changes in Federal and/or State regulations. Only authorizations for diagnosis or evaluation may be issued in Status 12. Diagnosis related to eligibility or the IPE can be provided at any time it is necessary during the life of the case. An IPE is not considered in effect until all required approvals have been obtained in accordance with Department policy.

(b) **General requirements for the Individualized Plan for Employment.**

(1) The IPE documents the planning of vocational rehabilitation services which will lead to achieving the client's chosen vocational goal. The client will be a full participant in the development of the IPE or any amendments consistent with Federal and State regulations, laws, and statutes. The eligible individual must be given the opportunity to exercise informed choice in selecting an employment outcome, the specific VR services to be provided under the plan, the service providers, and the methods for service delivery. ~~Before the IPE can become effective, it~~ For cases in an open priority group, the IPE must be agreed to and signed by the eligible individual or authorized representative, ~~and~~ approved by a VR counselor and, as appropriate, other administrators employed by DVR or DVS within 90 days of determination of eligibility, unless the individual or the authorized representative of the individual and the VR or VS counselor jointly agree to an extension of time of a specific duration. To the maximum extent possible, the IPE is to be provided in the native language or mode of communication of the individual or, as appropriate, of a parent, family member, guardian, advocate, or authorized representative. It is also required the client receive a copy of the plan and any subsequent amendments.

(2) The IPE is subject to continuous development and change. Substantial changes to the IPE are documented as amendments. A substantial change is broadly defined as any change in the plan affecting or changing the long range goal, or an addition or deletion of a service.

(3) Plan reviews are comprehensive reviews of the entire IPE. A plan review can be done at any time, but must be done at least annually. The client must be given the opportunity to review the plan and, if necessary, participate in its redevelopment and agree to its terms. A financial status determination will be completed at the time of plan review when the IPE includes services based upon client's financial status.

(4) The IPE is to be amended anytime there is a significant change in the employment objective, or in service needs or available resources not accounted for in the original IPE, or existing amendment(s). Available resources include client participation in cost, comparable benefits, and/or DVR/DVS funds. The amount of any client participation in the cost of a service will be based upon the determination of client's financial status completed at the time the relevant IPE or amendment is written, and is to be stated in the IPE or amendment. If services based upon financial status are included in the original IPE and/or in the amendment, a new Financial Status Determination form will be completed when the IPE is amended except for closure amendments. A copy of any Amendment to an Individualized Plan for Employment will be given to the client, or client's authorized representative, as appropriate.

(c) **Case recording requirements for the Individualized Plan for Employment.** The required content of the Individualized Plan for Employment consists of:

(1) a description of the specific employment outcome that is chosen by the client consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the client, and to the maximum extent appropriate, results in competitive employment in an integrated setting, and the estimated timeframe for the achievement of the employment outcome;

(2) a description of the specific VR services that are:

(A) needed to achieve the employment outcome including as appropriate, the provision of assistive technology services and devices, and personal assistance services, including training in the management of such services;

(B) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the client; and

(C) beginning and ending dates for each service;

(3) a description of the service provider chosen by the client or authorized representative, and the methods of services delivery;

(4) a description of the criteria that will be used to evaluate progress toward achieving the employment outcome;

(5) the terms and conditions of the IPE including as appropriate:

(A) the responsibilities of DVR or DVS;

(B) the responsibilities of the client, including:

(i) the client's responsibilities for the employment outcome;

(ii) the client's participation in paying the cost of VR services; and

(iii) the client's responsibility to apply for, accept, and use comparable services and benefits to defray in whole or in part the cost of VR services.

(6) for an IPE that includes supported employment services, information identifying:

(A) the extended services needed by the client; and

(B) the source of the extended services, including natural supports, or an explanation concluding there is a reasonable expectation a source will become available; and

(C) the weekly work goal.

(7) if it appears they will be necessary, a statement of needed post-employment services.

PART 7. SOCIAL SECURITY ADMINISTRATION PROGRAMS

612:10-7-73. Social Security referrals [REVOKED]

~~(a) Referrals of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) applicants will be made from the DRS screening unit located in the Disability Determination Division (DDD) and also from other sources.~~

~~(b) Referrals from the DRS screening unit will be sent a letter with the address and telephone number of the field office that serves the geographical area, with a copy to the local field office. Medical information will be copied and retained at the DRS screening unit located in the Disability Determination Division (DDD) for one year. At the time the individual makes application for services, the VR counselor will contact the DRS screening unit to request copies of the medicals on that individual. Some of the referrals from the screening unit will have been denied benefits or will otherwise not be beneficiaries of the SSDI or SSI program.~~

~~(c) From time to time the DRS Screening Unit may request counselors to send medical information from a case on their caseload. The counselor will comply with these requests as soon as possible.~~

12:10-7-74. Verification of Social Security Disability beneficiary status [REVOKED]

~~Verification of SSDI or SSI status is made in Status 02 when the counselor enters information on the Client Information System as receiving disability benefits. Upon receipt of an entitled or current pay document, the counselor has documentation that the individual meets the criteria for basic eligibility provided the conditions in 612:10-7-4(b)(1) are met. Verification of SSDI or SSI status is made on all individuals with severe impairments when the case is moved to status 12. This request is made by the State Office and the results reported to the counselor as to the beneficiary status. Action on the part of the counselor will not be necessary to initiate the verification request. If an individual becomes entitled to Social Security after the initial request, the counselor must request a beneficiary status update from the DRS Screening Unit.~~

612:10-7-75. Refusal of RVS services [REVOKED]

~~(a) The Social Security Act requires recipients of SSI and SSDI benefits to accept vocational rehabilitation services offered or face the risk of having their benefits suspended or terminated. Therefore, it is mandatory the counselor provide this information to the client. This explanation must be documented in the case record.~~

~~(b) It is the responsibility of the VR counselor to report any instance in which a refusal issue may be present.~~

~~(c) A refusal issue may arise when the beneficiary fails or refuses to permit the rehabilitation agency to assess his or her vocational rehabilitation potential or refuses services.~~

~~(d) A refusal may be reported at any time during the life of the case by sending a memo to the DDD screening unit. The memo will include information regarding attempts to contact, information obtained from the Social Security Office, kinds of services offered, and the attempts of the counselor to gain cooperation along with specific dates of those actions. The memo will also address whether, in the counselor's judgment, the client has just cause for refusing DVR or DVS services.~~

~~(e) A refusal can be documented when the person fails to respond to a significant attempt at contact. "Significant attempt" is more than a single routine attempt at contact to which there is no response. It will include at least one documented attempt each at personal contact, contact by telephone, and a letter sent to the address on record with SSA.~~

612:10-7-76. Failure to cooperate [REVOKED]

~~Client's failure to cooperate can be documented when the referred person fails to respond to a significant attempt at contact. "Significant attempt" is more than just a single routine attempt at contact to which there is not a response. It is more than one letter or telephone call. It will include several letters, telephone calls, and attempts at personal contact and an attempt to contact the person at the address to which benefit checks are being sent.~~

612:10-7-77. Social Security closures [REVOKED]

~~(a) All cases of SSDI and SSI clients closed in statuses 08, 28 or 30 will be reported to the Social Security Administration as refusing services when the reason for action is:~~

~~(1) Code 03 - Refused services or further services~~

~~(2) Code 07 - Failure to cooperate~~

~~(b) DRS screening unit will be furnished a detailed memo on the entitled SSA client's unwillingness to participate in DVR and DVS services. A copy of completed Notification of Case Closure, pertinent Case Narratives, and Vocational Rehabilitation and Visual Services Application forms on each case falling into this category will be forwarded to the DRS screening unit.~~

~~(c) Active SSDI and/or SSI recipients cannot be closed using reason code 01 (unable to locate or contact; or moved). The Social Security office must be contacted for a current address. If the individual has moved out of the counselor's territory, the case must be transferred to the appropriate counselor. If the individual has moved out of state, a referral must be sent to that state rehabilitation agency, along with pertinent case documentation.~~

~~(d) The counselor is to discuss SSA work incentives with the individual, and document this discussion in the case folder.~~

PART 9. ACTIONS REQUIRING REVIEW AND APPROVAL

612:10-7-87. Actions requiring supervisor's approval

~~For the situations outlined in this Section, it is necessary to obtain supervisory approval.~~ The supervisor indicates approval by signing the appropriate documentation or form in the case, or by memorandum when necessary. Verbal approval may be given when circumstances warrant, but must be followed immediately by written approval. The supervisor may delegate approval authority to a subordinate professional only when absolutely necessary because of prolonged absence or similar reasons, and when arrangements cannot be made for another supervisor to perform duties for the absent supervisor.

The subordinate professional must have at least two years of experience as a Senior VR Counselor in the appropriate Division, be current on production goals, and not be under corrective discipline or intensive supervision. The appropriate field coordinator's approval must be obtained for any such substitution or delegation.

(1) All actions of a newly employed counselor/teacher. The newly employed counselor/teacher will remain under intensive supervision until the counselor/teacher has reached a sufficient level of competence to work under general supervision as documented by the program manager. The release from intensive supervision will be given to the counselor/teacher in writing with a copy to the field coordinator. A counselor or teacher can be returned to intensive supervision when documentation or observation indicates he or she is no longer at a level of competence to work under general supervision. This decision will be given to the counselor/teacher in writing with a copy to the field coordinator.

(2) All IPE's or amendments when the total of the planned DVR and DVS expenditures for the entire case exceed $15,000.

(3) All IPE's which include out-of-state training.

(4) All IPE's which include the purchase of psychotherapy or personal adjustment counseling.

(5) Purchase of hospitalization for diagnostic purposes.

(6) All IPE's which include purchase of occupational tools and equipment or initial stocks for small business enterprises.

(7) Release of confidential information in instances not covered in 612:10-1-5.

(8) All case closures except Status 08 closures.

(9) Transfer of cases from one counselor/teacher caseload to another outside the sending supervisor's unit (signed by the supervisor of the sending counselor or teacher).

(10) All IPE's which include purchase of physical or mental restoration services, prescription drugs or prescribed medical supplies lasting more than three months.

(11) ~~All IPE's which include purchase of prescription drugs or medical supplies in excess of $3,000~~ Maintenance for job search services beyond 1 (one) month.

(12) Clothing expenses in excess of $400.00

612:10-7-88. Actions requiring field coordinator's approval

~~In the situations outlined in this Section, it is necessary to obtain field coordinator approval.~~ Field coordinator approval is requested by written memorandum from the counselor, accompanied by a written recommendation from the supervisor. The field coordinator gives his or her approval in a written memorandum to the counselor, with a copy going to the supervisor. Verbal approval may be given when circumstances warrant, but must be followed immediately by written approval. The field coordinator must approve:

(1) all IPE's which include DVR and DVS funding of ~~tuition for~~ training beyond the bachelor's degree level;

(2) all IPE's which include the purchase of housing modifications costing more than $2,500;

(3) delegation or substitution for supervisory approval in case of supervisor's prolonged absence or similar circumstances.

(4) dental services during active job search.

(5) dental services requiring hospitalization.

PART 11. PHYSICAL AND MENTAL RESTORATION SERVICES

612:10-7-98. General guidelines for physical and mental restoration services

(a) To the extent that assistance is not readily available from a source other than DVR or DVS, diagnosis and treatment of physical and mental impairments may be provided to contribute directly to the individual's employment outcome. This can be either job retention or job placement. Physical or mental restoration services are provided only when the condition is stable, or slowly progressive. A slowly progressive condition is one in which the client's functional capacity is not expected to diminish so rapidly as to prevent successful completion of vocational rehabilitation services, and/or employment for a reasonable period of time. The individual is liable for services he or she arranged which were not planned and initiated under the auspices of DVR and DVS. DVR and DVS will not pay for hospitalization or treatment occurring prior to initiation of an IPE. DVR and DVS will not pay for emergency hospitalization or treatment needed at the time of referral. However, diagnostic examinations or information may be paid from DVR and DVS funds for use in eligibility determination, priority group placement, or determination of vocational rehabilitation needs. Physical and/or mental restoration services will be purchased only from licensed or board certified health professionals. Payment will be made in accordance with the established fee schedule of the Department.

(b) Temporary conditions with sudden onset do not fall within the definition of impairment for eligibility purposes. Emergency treatment of remediable conditions will not be purchased by DVR and DVS except under intercurrent illness policy. When the staff is in doubt as to the effect of such a condition upon the outcome of the IPE objectives, a medical consultation may be requested.

(c) Some individuals have stable or slowly progressive conditions of long duration. These conditions affect the client's ability to remain in or enter remunerative competitive employment and cannot be expected to heal without medical intervention. DVR and DVS ~~does~~do not provide long-term or ongoing physical or psychological treatment. DVR and DVS funds ~~will not~~cannot be used to ~~purchase~~initiate treatment ~~lasting~~that is reasonably anticipated to last more than three months unless supervisory approval has been obtained for a three month extension. Additional three month extensions may be approved only if client maintains ~~successful~~reasonable progress toward achieving the vocational goal. Persons needing long-term or ongoing treatment are to be referred to the Department of Human Services' Medical Assistance Program.

DVR and DVS funds may be used to pay the costs for treatment of stable, or at worst, slowly progressive conditions when the conditions in (1) and (2) of this Subsection are met.

(1) The individual's employment is endangered or the client has lost employment due to the condition requiring treatment.

(2) Payment from DVR and DVS funds may be planned and authorized only after applicable third party pay sources provide verification of the expense they will cover, and not cover, associated with the physical or mental restoration services in question. When DVR and DVS funds are used to supplement a third party pay source, planned services and the authorization will be limited to those expenses that fall within the scope of the program and that do not exceed the difference between what the third party pay source will pay and the Department's established payment schedule.

(d) Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

612:10-7-104. Drugs and supplies

(a) Prescription drugs and/or prescribed medical supplies may be purchased when required for proper diagnosis, for post-operative treatment, or to stabilize a documented disability. The need for the drugs and/or medical supplies must be documented in a physician's report. Over-the-counter drugs are not to be purchased with DRS funds. ~~Durable medical equipment does not fall within the category of prescribed medical supplies, and its purchase is not limited by the provisions of this Section.~~ Prescription drugs and/or prescribed medical supplies which are part of a treatment plan are not to be purchased unless they are necessary to achieve an intermediate objective established in the IPE. The counselor can plan the purchase of prescribed drugs and/or medical supplies up to a total of ~~$3,000 for the life of the case~~ three months. Supervisory approval must be obtained for any planned purchases of prescribed drugs and/or medical supplies ~~above~~beyond this ~~limit~~timeframe.

(b) Payment will be made for generic type drugs unless the physician specifically requests a brand name drug.

(c) Durable medical equipment does not fall within the category of prescribed medical supplies and the provisions of this section do not limit its purchase.

PART 15. TRAINING

612:10-7-142. General guidelines for training services

(a) Training may be provided for clients who:

(1) are mentally, physically and/or emotionally capable of pursuing a course of training to completion;

(2) do not possess vocational skills which can be utilized for suitable employment within the disability limitations; and

(3) are determined to have a reasonable opportunity for obtaining employment in the chosen vocation.

(b) It is the policy of DVR and DVS not to assist clients in training beyond the requirements for the chosen vocational objective. DVR and DVS will only pay tuition and fees for courses which count toward requirements consistent with the vocational goal of the IPE. Training of DVR and DVS clients is provided by colleges, universities, private business and trade schools, state supported vocational schools, employers in the form of on-the-job training, sheltered workshops, and other approved training facilities with valid contracts.

(c) Federal regulations require a search for comparable services and benefits with the results documented before payment can be made for training in the following institutions: colleges, universities, community/junior colleges, public or private vocational/technical schools, or hospital schools of nursing.

(d) Training costs will not be authorized beyond the first DVR and DVS sponsored enrollment until proof of the availability of comparable benefits is received by the counselor.

(e) Once training has begun, the client is expected to progress toward the vocational objective at a steady rate. This requires the client to attend training on a regular basis, and maintain a full-time load to complete training in a minimum period of time. Sporadic attendance and reduced training loads causing a delay in the completion of training must be reviewed by the counselor.

(f) All types of institutional, technical, personal adjustment or employment training are purchased by an authorization, issued either by the field counselor or by a designated supervising counselor.

PART 19. SPECIAL SERVICES FOR INDIVIDUALS WHO ARE BLIND, DEAF, OR HAVE OTHER SEVERE DISABILITIES

612:10-7-197. Interpreter service fees [REVOKED]

~~Fees for interpreter services for the deaf have been approved by the Rates and Standards Board and by the DRS Commission. Fees are based on evaluation and certification of an interpreter's ability in the use of manual communications and knowledge of deafness by the National Registry for Interpreters for the Deaf (NRID) or by the Oklahoma Department of Rehabilitation Services. Interpreters who do not have certification with either NRID or DRS but who have been screened by the Rehabilitation Services to the Deaf Unit will receive payment at the noncertified rate. An interpreter will be paid for a minimum of 1 1/2 hours for any assignment. Interpreter fees are detailed in 612:10-13-3.~~

612:10-7-198. Telecommunication services and devices for individuals with hearing impairments [REVOKED]

~~Qualified persons who are deaf, hard of hearing, speech impaired or deaf-blind will have access to message relay services and telecommunication devices. Both services have been developed and implemented to allow access to existing public telephone services. These services are explained in OAC 612:10-13.~~

SUBCHAPTER 9. REHABILITATION TEACHING SERVICES

PART 1. GENERAL PROVISIONS

612:10-9-1. Philosophy and scope of program

(a) Blindness is a serious, disabling condition ~~which requires~~requiring adjustments in an individual's lifestyle to be a fully functional member of society. The primary task of the rehabilitation teacher is to provide services ~~which~~that enable a legally blind individual to make these necessary adjustments to cope with the demands of living with a severe visual impairment.

~~(b) Rehabilitation teaching is a professional discipline in which individualized programs of services are developed with clients to assist them in their daily activities to be more productive and to gain greater independence and self-esteem. This is accomplished through instruction and guidance by a qualified competent professional skilled in the techniques and knowledge necessary to carry out his/her duties.~~

~~(c) Rehabilitation teachers believe rehabilitation services are the right of every eligible person who desires and needs them. The teacher carries out the delivery of appropriate and meaningful services to the blind population.~~

~~(d) Rehabilitation teaching is constantly in a state of change, and teachers must continually upgrade their skills and education to enable clients to receive appropriate services.~~

~~(e) The teacher represents the agency and must perform competently to assure quality services and public credibility.~~

(~~f~~b) The services available through the rehabilitation teaching program directed toward assisting people with severe visual impairment or who are blind to live more independently are:

(1) Counseling and guidance directed toward helping the ~~client~~consumer and/or the ~~client's~~consumer's family adjust to blindness, to understand the limitations it imposes, and to make a realistic assessment of his/her capabilities.

(2) Provide evaluation and instruction in the techniques and procedures for performing those tasks and activities necessary to daily living.

(3) Provide resource information and make referrals as needed for additional services.

(4) Assist the ~~client~~consumer in becoming oriented to his/her ~~surroundings~~residence and develop a basic level of safety and independence in mobility.

(5) Provide instruction in the various communication media designed to enhance the individual's ability to communicate with others and maintain personal and other records.

(6) Assist the individual in over-coming mannerisms and behavior patterns associated with blindness ~~which~~that are detrimental to social adjustment.

(7) Provide and/or arrange specialized instructional services in the areas of home and personal management.

(8) Rehabilitation teaching staff ~~also~~must participate in the diagnostic and adjustment processes in the vocational rehabilitation program. They ~~also~~must have a direct role in the development of the individualized rehabilitation program and amendments.

(c) Rehabilitation teaching independent living services is a formalized program of services with the purpose of enhancing the ability of an individual with a severe visual disability to live independently and function within his/her family and community and, if appropriate, secure and maintain employment.

(d) Independent living is defined as control of one's life based on the choice of acceptable options which minimize reliance on others in decision making and in performing every day activities.

612:10-9-2. ~~Client~~Consumer rights

(a) **Rights.** Each person applying for services will be given full consideration of his/her needs as they relate to the Rehabilitation Teaching Program. No one will be denied services based on his/her age, race, sex, creed, color, or national origin. The ~~client~~consumer has the right to participate in the development of the IRP and all subsequent amendments. An IRP will be written for each ~~client~~consumer determined eligible for services.

(b) **Right of appeal.** The ~~client~~consumer has the right to appeal the decision of the teacher. If a meeting with the ~~supervisor~~ Programs Manager is requested by the ~~client~~ consumer, a time and place convenient for the ~~client~~consumer will be selected. The results of the conference will be placed in writing and a copy placed in the case folder. The rehabilitation teacher is required to advise the ~~client~~consumer of the Client Assistance Program (CAP) and adhere to 612:10-1-6. The Rehabilitation Teacher will provide copies of such brochures in consumer's chosen format.

612:10-9-3. Rehabilitation ~~teacher's~~ of the Blind Specialist's role

~~(a) **Area of responsibility.**~~ The primary goal of the ~~rehabilitation teacher~~ Rehabilitation of the Blind Specialist is to provide evaluation, instruction, and guidance to assist individuals who are legally blind to live more independently.

(~~b~~1) **Relationship to ~~supervisor~~ Programs Manager.** The ~~teacher~~specialist is directly responsible to his/her ~~supervisor~~ Programs Manager on all casework and office procedures. The ~~supervisor~~ Programs Manager will consult with the Coordinator of Instructional Services on the teacher's progress or needs. When a problem or situation arises needing attention, but is not within the scope of the teacher's area of responsibility, the teacher must bring it to the attention of the ~~supervisor~~ Programs Manager.

(~~c~~2) **Coordinator of instructional services.** The ~~teacher~~specialist may need to consult with the Coordinator of Instructional Services for ~~advise~~advice and/or assistance in providing services to clients. Special areas of consultation will include:

(~~1~~A) Services to the deaf-blind.

(~~2~~B) Services to the aging-blind.

(~~3~~C) Teacher supplies.

~~(4) Merchandise Service.~~

(~~5~~D) Braille or ~~tapetaped~~ material.
(~~6~~E) Program evaluation.
(~~7~~F) In-service training.
(~~8~~G) Orientation and mobility.
(~~9~~H) Reviews.

~~(d) **Record maintenance.** The rehabilitation teacher will maintain a record for each client which will contain pertinent information about the individual and the services provided. The case information will be filed in a separate folder for each client.~~

(~~e~~3) **Case transfers.** When it has been determined a ~~client~~consumer has moved from one ~~teacher's~~specialist's area to another~~, or in the supervisor's opinion,~~ and a transfer is in the best interest of the ~~client~~ consumer and agreed upon by the consumer, specialist and Programs Manager, the case will be transferred. All cases must be reviewed and signed by the sending ~~teacher's~~specialist's ~~supervisor~~ Programs Manager prior to transfer.

(~~f~~4) **Confidentiality.** All ~~client~~consumer information is confidential and will be treated according to instructions in 612:10-1-5.

PART 3. CASE PROCESSING AND RECORDING

612:10-9-13. Case recording standards

Case recording is an important part of the rehabilitation ~~teacher's~~specialist's work. A case record accurately and completely maintained can assist the ~~teacher~~specialist in the development of an effective teaching program, provide continuity in the provision of services and enable the teacher to evaluate the ~~client's~~consumer's progress. It also serves as a legal basis for the expenditure of funds and documents actions, activities and decisions of the teacher. The three types of case recording are:

(1) **Narrative.** Narrative recording is generally used for initial interviews, closure summaries, justification of the IRP, counseling activities, planning and decision making. Narrative ~~recording is~~ recordings are generally entered and dated according to the date the activity transpired. Narrative ~~recording~~recordings must follow a chronological sequence.

(2) **Forms.** Accurate and complete information will be recorded on forms used for case processing. Signatures will appear on forms where appropriate.

(3) **Correspondence.** Letters are written, when practical, informing ~~clients~~ consumers of activities or requesting action.

612:10-9-14. Interim recording [REVOKED]

~~Clear, concise, factual narrative case recording of pertinent information during the case process will be written on a case narrative form. This information is to document, clarify or justify an action, activity, or event relevant to the provision of services. Teacher opinions will be stated as such.~~

612:10-9-15. Case status

(a) As a case moves through the rehabilitation teaching process the major activities being conducted at any given time are reflected by the status classification system. Under this system there are 7 statuses:

(1) status 02 - application signed;
(2) status 08 - closure from application;
(3) status 10 - case accepted;
(4) status 22 - services initiated;
(5) status 24 - interrupted services
(6) status 26 - successful closure; and,
(7) status 28 - unsuccessful closure.

(b) Changes in case ~~statuses~~status are documented by case narrative. ~~in the case record and the Client Information System is updated to reflect what has been documented in the record. The designated status of a case will reflect the major activity occurring in the process at the time.~~

612:10-9-17. Status 02 - applicant

(a) A case is placed in status 02 when the individual submits an application with DVR and DVS. An individual is considered to have submitted an application when the individual, or the individual's authorized representative, as appropriate:

(1) has completed and signed an application form or has otherwise requested services;
(2) has provided information necessary to initiate an assessment to determine eligibility and priority for services; and
(3) is available to complete the assessment process.

(b) The minimum information necessary to initiate an assessment to determine eligibility and priority for services consists of:

(1) individual's name;
(2) reported disability;
(3) individual's address, with finding directions when needed;
(4) individual's social security number, if available;
(5) availability of documentation of the reported disability; and
(6) agreement between individual and staff person taking application on the next steps to be taken in the application process.

(c) ~~Data will be loaded on the terminal as soon as possible.~~ A decision of eligibility or ineligibility must be made within 60 days of the completed application unless unforeseen and exceptional circumstances beyond the control of the Department indicate the need for an extension as documented on the Need for Extension of Time to Determine Eligibility form. The ~~individual~~consumer must agree an extension of time is warranted after full consultation.

(d) The ~~rehabilitation teacher~~ Rehabilitation of the Blind Specialist will conduct an initial interview and document it in a narrative summary. The ~~individual~~consumer and/or representative will be given an explanation of ~~client~~consumer rights and responsibilities and information about the Client Assistance Program in a medium which is understandable to the individual and in their preferred medium. The ~~teacher~~specialist will document this in the case record (See 612:10-1-6 Due Process).

The consumer will be offered the opportunity to register to vote at time of application and/or time of address change.

612:10-9-18. Status 08 - closure from application

A case will be closed in status 08 when it has been determined an applicant is ineligible for rehabilitation teaching services, fails to cooperate, or if all services are being provided through other resources. ~~Cases are closed in status 08 from status 02.~~ The ~~teacher~~specialist will document in the case recording the decision for closing the case.

612:10-9-19. Status 10 - case accepted

(a) The case is moved into status 10 when the individual is certified as eligible. The teacher will evaluate the case information and determine if the ~~client~~consumer meets the criteria given in (1) - ~~(5)~~(3) of this Subsection.

(1) ~~Client~~Consumer is legally and/or functionally blind or has a rapidly progressive condition ~~and may have secondary disabilities~~which is expected to result in legal blindness. If there is a difference in near and distance acuity, the worse acuity is used for determination of eligibility. ~~Legal blindness is defined as:~~

~~(A)~~ Legal blindness is Visual Acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less. Best correction means the best visual acuity that can be obtained with normal prescription lenses~~, and/or~~.

~~(B) Visual field of 20 degrees or less.~~

~~(2) If there is a difference in near and distance acuity, the worse acuity is used for determination of eligibility.~~

~~(3) For the purpose of determining eligibility, best correction means the best visual acuity that can be obtained with conventional lenses.~~

(2~~4~~) ~~Client~~Consumer has identifiable deficiencies in independent living due to disabilities.

(3~~5~~) It is expected services will improve the ~~client's~~consumer's independence in the home and community.

(b) The ~~teachers~~specialist is responsible for making a determination of eligibility on each ~~individual~~consumer requesting rehabilitation teacher services within 60 days of application and a letter of determination of eligibility will be provided in the consumer's preferred format. A narrative entry will be made documenting the change in status. ~~The teacher will collect information to support his/her decision on eligibility for documentation in the case record. When all available information has been obtained, the teacher will execute the Certification of Eligibility for Independent Living and Rehabilitation Teaching Services. In the absence of medical information, the teacher will write a narrative statement indicating the manner in which eligibility was determined. This statement will contain an explicit description of the procedure used to determine eligibility and will be attached to the Certification of Eligibility for Independent Living and Rehabilitation Teaching Services. In cases where the teacher has difficulty making a determination of eligibility, the supervisor will be consulted.~~ A certification of legal blindness signed by a physician or optometrist, such as the certificate of eligibility for talking book services, can be used to document eligibility for the Rehabilitation Teaching Program. ~~Information certifying an individual's eligibility is recorded on the Certification of Eligibility for Independent Living and Rehabilitation Teaching Services form. A narrative entry will be made documenting the change in status. On the form, the teacher will address the client's diagnosis as reported by documented medical and psychological reports, or as determined by teacher evaluation. The teacher will identify the specific functional limitations which prevent the individual from functioning in the home or community. The teacher will describe the individual's strengths, weaknesses, and how proposed services will increase the individual's chances for improved independence.~~

~~(c) The age of the applicant alone is not a factor for determining eligibility.~~

(c) While in acceptance status, the Comprehensive Assessment Form is completed to provide a basis for the formation of the consumer's IRP. The Comprehensive Assessment is used to determine the scope and nature of services to be provided to accomplish the consumer's objectives. The specialist will address the consumer's diagnosis as reported by documented medical and psychological report or as determined by specialist's evaluation. The specialist will identify the specific functional limitations which prevent the individual from functioning in the home or community. The specialist will describe the consumer's strengths, weaknesses and how proposed services will increase the consumer's chances for improved independence.

(d) After the ~~client~~consumer has been determined eligible, the ~~teacher~~ specialist starts the process of developing the Individualized Rehabilitation Program (IRP). In the development of the program, the ~~teacher~~ specialist will make a determination of the ~~client's~~consumer's present level of adjustment and his/her physical and emotional capacities for acquiring specific adaptive skills. This evaluation of ~~client~~consumer's needs will be documented on the Comprehensive Assessment for Independent Living and Rehabilitation Teaching Services form. Through consultation with the ~~client~~consumer, the ~~teacher~~ specialist will make a determination of the services needed to achieve a higher level of independence and/or self-sufficiency.

(1) The ~~teacher~~ specialist with the ~~client's~~consumer's participation will develop an IRP establishing an independent living objective. The independent living objective and services provided directly or indirectly will be included in the IRP. ~~The client's short term, intermediate, and long range goals will be considered when developing the IRP.~~

(2) ~~The teacher will complete the IRP, and a narrative recording dated the same in accordance with form guide instructions.~~ The narrative recording will include documentation of the ~~client's~~consumer's participation in the development of the IRP and all pertinent information. A copy of the IRP will be provided to the consumer in their preferred reading medium.

612:10-9-20. Status 22 - services initiated

(a) Cases remain in status 22 as long as program services are being provided to the client. While in this status, periodic narrative recordings will be entered in the case file describing services being provided and the ~~teacher's~~specialist's involvement. After development of the IRP, the specialist will begin instructional services to address the identified objectives. The consumer should expect continual instructional services until it is agreed upon by the specialist and consumer that the goals have been achieved or mutual agreement for case closure.

(b) In some cases, due to an alteration in the ~~client's~~consumer's situation or needs, it may be necessary to amend the original program. Program amendments are only necessary when there has been a substantial change in the program ~~affecting~~effecting client services. Such amendments will be developed with consumer participation and a copy of the amendment will be provided the consumer in their preferred reading medium. ~~The program changes will be updated on the Client Information System.~~

612:10-9-21. Status 26 - successful closure

~~(a)~~ A successful closure (Status 26) is when the planned program of services has been completed and/or the consumer has achieved his/her independent living goal. ~~A case is closed in status 26 when the planned program of services has been completed, and/or the client has achieved his/her independent living objective. A case is closed in status 26 when the teacher has provided all planned or necessary services, and when the client demonstrates a higher level of independence as a result of services provided. Cases are closed in status 26 only from status 22.~~

~~(b) The teacher will complete Case Closure for Independent Living and Rehabilitation Teaching Programs form. This document will provide a brief rationale for case closure. A concise summation of case progress and conclusion are to be included on the form. A narrative recording summarizing the case will be completed at the time of closure.~~

612:10-9-22. Status 28 - unsuccessful closure

~~(a)~~ An unsuccessful closure is when it has been determined that services cannot be successfully completed. The consumer or his/her representative must be informed as to the reason for case closure. ~~Cases in status 10 or above will be closed in status 28 when it has been determined that services cannot be satisfactorily completed. The narrative statement will include justification for closing the case prior to the completion of the planned services. The Client Information System will be updated appropriately. The client must be informed of the action if the reason for closing is coded 02, 08, 09, or 10.~~

~~(b) The teacher will complete a Case Closure for Independent Living and Rehabilitation Teaching Programs form. This document will provide a brief rationale for case closure. A concise summation of case progress and conclusion is to be included on the form. A narrative recording summarizing the case will be completed at the time of closure.~~

PART 5. SERVICES

612:10-9-32. Diagnosis and evaluation

As outlined in 612:10-7-201, consumers who are legally blind receiving services through the Rehabilitation Specialist will be referred for rehabilitation teaching services. Diagnosis and evaluation is an important part of the rehabilitation process. It is through this process the ~~teacher~~specialist gathers information to aid in determining eligibility as well as developing goals and strategies ~~which~~that may be included in the IRP.

(1) **Diagnosis.** The ~~teacher~~specialist must determine the medical causes of impairments to recognize the problems of each ~~person~~consumer and how they affect the ability to function. Individual differences and capabilities will be considered. The ~~teacher~~specialist will secure medical and/or psychological information when possible. If the ~~teacher's~~specialist's evaluation indicates a need for medical or psychological treatment the ~~teacher~~specialist will refer the ~~individual~~consumer to outside resources for help if it is not within the scope of rehabilitation teaching.

(2) **Vocational evaluation.** The rehabilitation ~~teacher~~specialist ~~play~~plays an important role in the evaluation of ~~an individual's~~ a consumer's ability to benefit from rehabilitation services in terms of an employment outcome. This evaluation will include the ~~individual's~~consumer's ability to benefit from rehabilitation services in terms of an employment outcome, family interaction, and access to community resources. The ~~teacher~~specialist and counselor work together coordinating activities for the ~~client's~~consumer's benefit.

(A) The rehabilitation ~~teacher~~specialist participates in the vocational evaluation by providing information about the ~~client's~~consumer's characteristics and skills based on observation and assessment. The ultimate responsibility for decisions about services is shared by the ~~client~~consumer, ~~teacher~~specialist and counselor.

(B) An important service provided by the ~~teacher~~specialist is the initial evaluation of the ~~client's~~consumer's adjustment to vision loss and ability to function independently. Areas to be evaluated include, but are not limited to, ~~client~~consumer and family attitudes toward blindness, degree of competence in communication, personal management, home management, and basic orientation to immediate surroundings.

(C) The evaluation process serves several other purposes for the ~~client~~consumer. First, it ~~will assist~~assists the counselor in determining if an applicant can benefit from vocational rehabilitation services. Once the ~~client~~consumer has been accepted for services, the ~~teacher's~~specialist's evaluation can assist significantly in the selection of an appropriate vocational objective and in determining the types of preparation and training necessary. During subsequent training, the evaluation process will help measure the ~~client's~~consumer's progress toward successful rehabilitation.

(3) **Family evaluation.** The ~~teacher~~specialist must be aware of the family influence on the rehabilitation outcome that can be expected for an individual. Sometimes family pressures and attitudes are more detrimental to the ~~client's~~consumer's motivation and rehabilitation than any other factor. Examples of family reactions may be guilt, resentment, overprotection, insecurity, or rejection.

(4) **Community evaluation.** Visual impairment may restrict ~~client's~~consumer's use of and access to community resources. Location, cost, eligibility, visual prerequisites, attitudinal barriers, and the level of ~~client's~~consumer's skills are to be considered when evaluating community resources.

(5) **Evaluation of independent living skills.** Prior to the development and implementation of the IRP, the rehabilitation ~~teacher~~specialist will thoroughly evaluate the ~~client's~~consumer's independent functioning. By assessing the ~~client's~~consumer's skills in basic areas such as communication, personal management, health management, home management, and adjustment to disabilities appropriate teaching services can be better identified. ~~The teacher will complete the Comprehensive Assessment for Independent Living and Rehabilitation Teaching Service form, addressing each area included on the form. When evaluating client's performance, the teacher is to specify the method of evaluation, i.e., self reporting, teacher observation, and/or evaluation.~~

(6) **Specific skills.** Following the evaluation the specialist and consumer will jointly determine specific skills needed for the consumer to achieve their goals and objectives as developed for the ILP. Consumers can expect instruction to be provided, but not limited to the following skill areas: communication, personal management, home management, guidance, counseling and other services as delineated in the sections that follow.

612:10-9-33. Communication

In order for the consumer to gain contact with their environment and use the tools available for communication the following skills can be considered: ~~It is the job of the rehabilitation teacher to help the client gain contact with the environment and use the various tools available for such communication. When working with clients in developing communication skills the rehabilitation teacher will consider the areas in (1) - (11) of this Subsection~~.

(1) Telephone usage. ~~When appropriate, the teacher will assess and instruct the client in telephone dialing, use of directory assistance and need for specialized equipment.~~

(2) Handwriting. ~~The client's ability to record information legibly including writing letters, addressing envelopes, signing his/her name, etc. will be evaluated and instruction provided, if needed.~~

(3) Labeling. ~~The teacher will assist the client in devising a system for identifying items such as packaged foods, medications, and documents, etc., as needed.~~

(4) Braille. ~~The teacher will determine the client's extent of need for braille reading and writing. The client's ability to discriminate tactually and to acquire new skills will be considered.~~

(5) Visual efficiency. ~~The teacher will evaluate the client's ability to utilize remaining vision and assist the client in learning techniques to maximize its use.~~

(6) Optical aids. ~~The teacher will determine the client's need for an ability to use optical aids. If appropriate, the teacher will provide instruction in use and care of optical aids.~~

(7) Time telling. ~~The teacher will determine if the client has an adequate system of keeping track of time. If necessary, the teacher will introduce the client to adaptive time keeping devices.~~

(8) Tape recorders. ~~If necessary, the teacher will instruct the client in the use of tape recorders. This medium is not appropriate for all clients.~~

(9) Receptive/expressive communication. ~~The client's ability to hear, process, and comprehend auditory information and to engage in oral communication is to be considered. The rehabilitation teacher will recommend and or provide training and equipment, if appropriate.~~

(10) Keyboarding. ~~The teacher will evaluate the client's ability to input \information by using keyboards (computers, typewriters, etc.) and provide instruction, as needed.~~

(11) Assistive technology. ~~The clients need for and ability to use electronic devices will be evaluated by the rehabilitation teacher. Further evaluation and training in this area may require specialized skills. In such cases, referral will be made to an appropriate specialist.~~

612:10-9-34. Personal management

The area of personal management encompasses all areas of self-care. The consumer can obtain the ability to meet personal needs that will promote increased confidence and independence. Evaluation and training can be accomplished in the following areas:~~Through the ability to meet personal needs the client may gain increased confidence and independence. Evaluation and training in personal management will include the activities of daily living given in (1) - (8) of this Subsection.~~

(1) Clothing care. ~~The teacher will evaluate and provide instruction in threading needles, sewing, mending, ironing and all other aspects of caring for one's clothing.~~

(2) Personal hygiene. ~~The teacher will make the client aware of the need for and demonstrate techniques in grooming, bathing, hair care, dental hygiene, etc.~~

(3) Clothing identification. ~~The teacher will assist the client in developing methods for identifying clothing.~~

(4) Health management. ~~The teacher will assist the client in understanding his/her health problems, how to follow medical regimens, and personal safety practices.~~

(5) Money management. ~~The teacher will assist the client in developing techniques for identifying coins and currency and maintaining financial records.~~

(6) Eating skills. ~~The teacher will counsel and instruct the client regarding proper etiquette and appropriate eating techniques.~~

(7) ~~Orientation and mobility (O&M)~~ Indoor Orientation & Mobility/Pre-cane Skills. Rehabilitation

~~teachers~~specialists provide basic orientation in the home. ~~and immediate surroundings.~~ The ~~teacher~~specialist can provide instruction in sighted guide, protective techniques, locating dropped objects, and pre-cane skills. ~~Clients~~Consumers needing extensive O&M training will be referred to a mobility specialist.

(8) Recreation. ~~The teacher will evaluate and provide training in leisure time activities such as crafts, library services, etc.~~

612:10-9-35. Home management

~~Home management is the performance of tasks necessary to care for one's household and family. For individuals who are blind or visually impaired, home management may require the application of adaptive techniques and devices. To assist the client in home management, the teacher will provide evaluation and instruction in meal preparation, kitchen organization, use of kitchen range, heating unit, and other household appliances, as well as housekeeping skills.~~Training in home management will enable the consumer to gain independence in managing his/her household and family. This training may require the application of adaptive techniques and devices in the following skills areas:

(1) Meal Preparation
(2) Kitchen organization
(3) Use of Oven/Stove Top/Microwave
(4) Housecleaning Techniques
(5) Minor Home Maintenance
(6) Use of Household Appliances
(7) Home Safety Techniques
(8) Environmental Analysis

612:10-9-36. Counseling and guidance

Counseling and guidance is one of the most important services provided to consumers and their families. This enables the consumer and their family members to make satisfactory adjustment to the existing problems of blindness that have remain unresolved. The specialist will assist the consumer in determining strengths while minimizing limitations. The following areas may be addressed:

~~(a) **Counseling and guidance services.** One of the most important services the rehabilitation teacher can render is the provision of counseling and guidance in helping the client and family make satisfactory adjustment to the existing problems of blindness that have remained unresolved. The teacher is often needed to help the client and family accept and adjust to the vision loss. Often the client's strengths must be reinforced and weaknesses minimized to develop necessary self-confidence. The client will be encouraged to participate in home and community activities. If the individual has withdrawn from such activity, the teacher helps provide skills which will permit reinvolvement.~~

(1) Personal Adjustment to Blindness
(2) Peer Support Education
(3) Family Adjustment to Blindness
(4) Self Advocacy training
(5) Specialist services, in support of Vocational Rehabilitation Counselor, for employment outcome
(6) Information and Referral Services to Other Resources

~~(b) **Client counseling.** The examples in this Subsection represent the nature and scope of rehabilitation counseling and guidance.~~

~~(1) Helping the client understand and make use of his/her capabilities, aptitudes and interests throughout the rehabilitation process on the basis of evaluation of the client's progress toward the selected goals.~~

~~(2) Helping the client understand his/her limitations and health, personal, and social problems related to the adjustment.~~

~~(3) Helping the client understand the services available from the rehabilitation agency and other community resources, and how to obtain and use these services in his/her adjustment.~~

~~(4) Helping the client adjust to situations encountered in achieving his/her rehabilitation:~~

~~(A) e.g., control of anxieties concerning physical restoration,~~

~~(B) development of appropriate study and work habits,~~

~~(C) improving personal appearance,~~

~~(D) managing finances,~~

~~(E) preparation for job interviews and tests,~~

~~(F) devising effective interpersonal relationships, and~~

~~(G) insight into the world of work, etc.~~

~~(5) Helping the client select suitable and realistic vocational goals.~~

~~(6) Planning with the client (and others when necessary) a program for the attainment of selected goals.~~

~~(7) Working with family members, relatives, and various segments of the community to aid in the individual's adjustment.~~

~~(8) Continuing follow-up with the client (and others when necessary) to assure suitability of the living status.~~

~~(c) **Family counseling.** Family understanding is important to the rehabilitation process, and the rehabilitation teacher can play a critical role in fostering family understanding and acceptance of the visually impaired family member's new skills.~~

~~(1) The family may not recognize the visually impaired person's ability to perform daily living tasks and it is extremely detrimental to successful rehabilitation when the client finds his/her new found abilities to function independently are not accepted by the family. The teacher must be prepared to deal with such attitudes, taking into consideration such variables as the family's attitude toward blindness, the strength of the family unit, and the position and relationship of the visually impaired client with respect to the rest of the family.~~

~~(2) The teacher needs to establish good rapport, not only with the client, but also with the entire family. Special emphasis will be given to methods for handling interpersonal relationships to ensure positive and supportive family attitudes. The results of observations of the family~~

~~situation will be incorporated into all rehabilitation teaching programs.~~

~~(3) The teacher will develop the skills and knowledge to effectively work with the family to instill a realistic attitude about blindness. Orientation of the family members to provide an understanding of blindness and of techniques the family can use to assist the client is important.~~

612:10-9-37. ~~Other Services~~Referral for Support Services

The consumer can take advantage of additional services provided through the agency and referred to by the rehabilitation specialist.

(1) Low Vision Services
(2) Support Groups
(3) Technology Lab for Low Vision & Blindness
(4) Deaf-Blind Services
(5) Orientation & Mobility Services
(6) Older Blind Services
(7) Vocational Rehabilitation Services
(8) Personal Adjustment Training Centers
(9) Management of Secondary Disabilities
(10) Confident Living Program
(11) Library for the Blind and Physically Handicapped
(12) Other resources as identified

~~In addition to counseling, the teacher will be involved in various other areas of service, including those listed in paragraphs (1) - (4) of this Subsection.~~

~~(1) **Low vision services.** To increase the client's understanding of the problems of functioning with low vision the rehabilitation teacher will offer descriptions of the aids available and their uses, discuss realistically what can be expected of the aids, and describe how certain eye conditions can be helped. Instruction will include utilization of illumination and such accessories as reading stands and other non-optical aids.~~

~~(A) The rehabilitation teacher will be aware of the low vision clinics available and the services they offer, and make referrals when appropriate.~~

~~(B) Follow-up to assist the client in adapting to low vision aids and instruction in the proper use and care of low vision aids will be provided by the teacher whether the aids are recommended by rehabilitation teachers or other specialists.~~

~~(2) **Volunteers.** The rehabilitation teacher may coordinate services involving use of volunteers in working with clients. Volunteers will not be used to perform duties for which they have not been properly trained.~~

~~(3) **Rehabilitation centers.** The teacher will be aware of available rehabilitation centers and the services they offer.~~

~~(4) **Other department programs.** Many clients on the teacher's caseload will be eligible for services through other programs. The teacher will use resources through other Department of Rehabilitation Services programs. Services are available through DRS to address special needs of persons who are blind or deaf/blind as described in 612:10-7-205. For clients not capable of benefitting from vocational rehabilitation services in terms of an employment outcome as determined by an extended evaluation, the teacher will consider Independent Living services. The teacher will also use resources as appropriate from programs in other departments, such as the Department of Human Services.~~

612:10-9-38. Vocational rehabilitation

The consumer can receive the services of the rehabilitation teaching program while being served through the Vocational Rehabilitation counseling program. The specialist will provide comprehensive teaching services necessary for the consumer to meet their employment goal.

~~In many instances, an individual will benefit from both the services of the rehabilitation teacher and VR counselor. In such cases, the teacher and counselor will, through consultation, jointly plan, continually exchange information, and coordinate their activities to provide the most effective service to the clients. It is the teacher's role to help develop an awareness of vocational potential and interests. The teacher is an integral member of the team working with clients toward achieving independence and personal fulfillment through employment. The teacher and counselor will jointly evaluate client's capabilities and needs in various skill areas.~~

(1) **Referral from rehabilitation ~~teachers~~specialist.** When, in the opinion of the rehabilitation ~~teacher~~specialist, ~~an individual~~ a consumer would benefit from the services of a VR counselor, a written referral ~~will be~~is made. A referral is made if there is reasonable expectation the individual could be restored to gainful employment through the provision of teaching services or other DVR and DVS services.

(2) **Referral from counselors.** On receipt of a referral from a VR counselor, the ~~teacher~~specialist will contact the referred individual and make a determination of the need for teaching services and the potential to benefit from them. The counselor will be informed in writing of the ~~teacher's~~specialist's findings (See definition of legal blindness under 612:10-1-2).

(3) **Joint service status.** When it is determined a ~~client~~consumer can benefit from both teaching and counseling services the ~~teacher~~specialist and counselor, through consultation with each other and the ~~client~~consumer will develop a program of services. During the provision of services, the counselor and ~~teacher~~specialist will share pertinent information including narrative recording.

(4) **Closing joint cases.** When preparing a joint case for closure, the rehabilitation ~~teacher~~specialist and counselor will consult one another to determine readiness for closure.

SUBCHAPTER 11. INDEPENDENT LIVING REHABILITATION SERVICES

PART 1. SCOPE OF ILRS

612:10-11-9. Consumer Independence Support Services

(a) **Consumer Independence Support Services.** Consumer Independence Support Services (CISS) may be provided to individuals with severe disabilities (Priority Groups 1 or 2). It has been found successful rehabilitation can be impeded by lack of independent living services to augment other traditional case services. These services can be purchased from vendors contracted to provide Consumer Independence Support Services.

(b) **Criteria for referral to Consumer Independence Support Services.** An individual may be referred for CISS if:

(1) the individual is determined to be eligible for VR, VS or IL services;

(2) whose functional limitations have caused them to be placed in Priority Group 1 or 2: and

(3) A comprehensive assessment identifies Consumer Independence Support Services are necessary for the rehabilitation/independent living objective to be obtained.

SUBCHAPTER 13. SPECIAL SERVICES FOR THE DEAF AND HARD OF HEARING

PART 1. SERVICE PROGRAMS

612:10-13-1. Mission of the program

(a) **Purpose** This Subchapter describes the special services available from the Department of Rehabilitation Services specifically targeted to the needs of individuals with deafness ~~the deaf, and~~ hard of hearing and other communicative disorders. These services are provided to meet the communication needs of this population. Available services are explained, and guidelines for providing these services are presented.

(b) **Acronyms**The following acronyms, when used in this subchapter, stand for the following:

((1)) **"CDI"** Certified Deaf Interpreter

((2)) **"CI"** Certificate of Interpretation

((3)) **"CSC"** Comprehensive Skills Certification

((4)) **"CT"** Certificate of Transliteration

((5)) **"NAD"** National Association of the Deaf

((6)) **"QAST"** Quality Assurance Screening Test

((7)) **"RID"** Registry of Interpreters

((8)) **"SDHH"** Services to the Deaf and Hard of Hearing

612:10-13-2. Interpreter services for the deaf

(a) Interpreter services are provided to DRS consumers to facilitate the communication with individuals who are ~~enable the client who is~~ deaf, hard of hearing and deaf-blind.~~, or does not speak English to communicate with individuals involved in~~ during the processing of the ~~client's~~consumer's application or provision of rehabilitation services. This service does not require consideration of ~~client~~consumer participation in cost. There is no limit on the number of hours a particular individual can be provided this service. The counselor will try, however, to hold the number of hours to the lowest number practical. In training situations, if a vendor refuses to comply with the law, DRS may provide the accommodation after assisting the client in filing a complaint and after notifying the vendor a bill for all services provided will be sent to the vendor following resolution of the complaint~~the counselor must document that interpreter services are not available through the training facility or other sources before interpreter services are provided~~. The rate of payment is determined by the certification held by the interpreter as documented in their current contract.

(b) Interpreter services are authorized directly to the individual who will provide the service. The authorization will include the number of hours to be provided and the period of time over which the service is to be provided in addition to the per hour fee as listed in 612:10-13-3. The interpreter will submit a claim at the end of each specified time period.

(c) Interpreter services for the hard of hearing may be authorized to individuals who have valid interpreter contracts with the Department. The rate of payment is determined by the certification held by the interpreter as documented in their current contract. Rates to be paid for interpreter services according to the interpreter's level of certification are found in 612:10-13-3.

612:10-13-3. Interpreter service fees

Fees for ~~interpreter~~interpreting services ~~for the deaf~~ have been approved by the Rates and Standards Board and by the DRS Commission. Fees are based on interpreter~~evaluation and~~ certification level ~~of an interpreter's ability in the use of manual communications and knowledge of deafness by the National Registry for Interpreters for the Deaf (NRID) or by the Oklahoma Department of Rehabilitation Services (DRS)~~. An interpreter holding certification at more than one level will be paid the fee for the highest level held. Interpreters who do not have certification with either ~~NRID~~Registry of Interpreters (RID), National Association of the Deaf (NAD) or ~~DRS~~ Quality Assurance Screening Test (QAST) but who have been screened by the Rehabilitation Services to the Deaf Unit will receive payment at the non-certified rate. An interpreter will be paid for a minimum of ~~1 1/2~~1.5 hours ~~for any~~per assignment. ~~Interpreters are to be given notice of cancelled appointments no later than twenty four hours prior to the appointment, otherwise, the interpreter will receive payment for 1 1/2 hours.~~ If an interpreter is cancelled less than 24 hours from the start of the assignment, they will be compensated 1.5 hours of their scheduled time.

612:10-13-4. Special services and devices for individuals ~~with hearing and speech impairments~~ who are deaf, hard of hearing, deaf-blind or have communicative disorders

~~(a)~~ ~~**Applicability.**~~ ~~Qualified persons who are~~ This section applies to individuals with ~~deaf~~deafness, hard of hearing, deaf-blindness or communicative disorders ~~speech impaired or deaf-blind will have~~ who require access to telecommunication services and devices ~~which~~to enhance communication and contribute to the individual's residential and personal ~~increased~~ safety.

(1~~b~~) **Telecommunication and safety devices.** ~~Qualified persons who are deaf, hard of hearing, speech impaired or deaf-blind~~ Consumers may be provided telecommunications equipment, personal or home safety devices, or other specialized equipment determined by individual need. The recipient of services may be asked to participate in the cost of the services provided based upon individual or family income in accordance with (d) of this Section. Equipment will not be replaced before five (5)~~three (3)~~ years have ~~elapsed~~ lapsed unless determined by DRS staff to be malfunctioning and not caused by consumer misuse or neglect. Appeals of this waiting period must be presented in writing for administrative review. DRS staff will consider possible changes in disability. The consumer is responsible for the equipment when the manufacturer's warranty expires prior to the five (5) year period. DRS will provide surge protection which must be used. Failure to use surge protection will be considered consumer neglect.~~ and then only if determined by DRS staff to be malfunctioning and non-repairable.~~ Additional requirements are stated in ~~(1)~~(A) through ~~(5)~~(E) of this Subsection.

(~~1~~A) All recipients of equipment must be residents of the state.

(~~2~~B) Medical or audiological verification will be required to support the applicant's diagnosis of a hearing loss to ~~Applicants must be hard of hearing to~~ the extent the applicant cannot use the telephone, or ~~speech impaired~~ communicative disorders to the extent speech is unintelligible. ~~In cases where eligibility is questionable through counselor observation, medical or other professional verification will be required.~~ If verification is not available, DRS will authorize the initial audiological evaluation. Individuals with deaf-blindness will be referred to the deaf blind program to determine equipment needs. Documentation of legal blindness or inability to read standard print is required.

(~~3~~C) Parents or other legal guardians must assume responsibility for the telecommunication devices assigned to clients under 18 years of age.

(~~4~~D) The guidelines in ~~(A)~~(i) - ~~(D)~~(iv) of this Paragraph will be used in determining the priority of service.

(~~A~~i) Qualified persons with disabilities living alone.

(~~B~~ii) Qualified households where all residents have substantial disabilities.

(~~C~~iii) Qualified households where two or more residents have substantial disabilities.

(~~D~~iv) Qualified households where one of the residents has a substantial disability.

(~~5~~E) To apply for assistance, an individual must complete an application and registration using the ~~Eligibility Application for Telecommunication Equipment~~ Application for the Equipment Distribution Program form. Applications may be obtained by contacting ~~the nearest TDD service office, rehabilitation counselor or Rehabilitation Services Coordinator for~~ Services to the Deaf and Hard of Hearing or any DRS office. Equipment may be mailed to the closest DRS office for the consumer to pick up. If not picked up within 30 days, the equipment will be returned to DRS inventory to be issued to the next consumer on the waiting list.

(2~~c~~) **Hearing aids for senior citizens.** Hearing aids may be purchased through the Services to the Deaf and Hard of Hearing Unit of DRS for individuals who are sixty (60) years of age or older and have a hearing loss of 35 decibels or greater in the better ear. The level of hearing loss is to be determined by a vendor audiologist selected by the applicant and having a current contract to provide services under this program. One hearing aid will be purchased per person. All services and equipment purchased will be paid at the contracted rate. The individual may be required to participate in the cost of services in the form of a co-payment as determined under ~~(d)~~(3) of this Section. Procedures for providing hearing aids under this program are presented in ~~(1)~~(A) through ~~(5)~~(D) of this Section.

(A~~1~~) **Application.** ~~The Areawide Aging Agencies (AAA) operated by the State Department of Human Services and the Eldercare agencies operated by the State Department of Health will take applications for this program on individuals who are sixty years of age or older. DRS will supply the agencies with application forms. An applicant will be given an approved vendor list and asked to choose a preferred vendor audiologist. The completed application will be sent by the referral source to the DRS Services to the Deaf and Hard of Hearing Unit.~~ An applicant will complete the Application for the Equipment Distribution Program (form DRS-D-001) and submit the completed application along with proof of income to the Services to the Deaf and Hard of Hearing Unit.

(B~~2~~) **Eligibility determination and authorization of services.** Upon receipt of a completed application, the staff of the Services to the Deaf and Hard of Hearing Unit will determine the amount of any required co-payment in accordance with (d) of this Section. Staff will authorize an audiological evaluation to the preferred vendor designated on the application form. The referral source and applicant will be notified of the authorization and the amount of any required co-payment to be made to the vendor. The report of audiological evaluation is sent to the DRS Services to the Deaf and Hard of Hearing Unit. If the result is a hearing loss of 35 decibels in the better ear, staff will issue an authorization for a hearing aid and appropriate ancillary services and devices in accordance with the vendor contract. The level of hearing loss will be determined averaging the readings reported at the ~~500 Hz,~~ 1000 Hz, ~~and~~ 2000 Hz, 3000 HZ and 4000 HZ frequency ranges.

(C~~3~~) **Appointments and transportation.** The staff of the DRS Services to the Deaf and Hard of Hearing

Unit will notify the individual ~~and the referral source~~ of any authorizations for evaluation or services. This notification will instruct the individual to contact his/her selected ~~the~~ vendor for an appointment. ~~The referral source will assist the individual with making the appointment and arranging transportation if needed.~~

~~(4) **Evaluation of service provision.** Following completion of the evaluation and hearing aid fitting, a simple response card will be sent to each individual to determine the applicant's satisfaction with the program, the vendor, and the services provided.~~

(D~~5~~) **Disposal of unused hearing aids.** ~~A list of agencies which recycle used hearing aids will be provided to the referral source.~~ Service recipients will be encouraged to ~~donate unused~~return hearing aids to ~~one of these agencies~~ DRS if no longer needed.

(3~~d~~) **Client participation in cost of services.** Allowable income levels for these services will be 200% of the current income guidelines for food stamps. The monthly earnings, evaluated annually, that fall above the income guidelines create a surplus. Ten percent (10%) of that surplus will be the consumer's participation in the cost of services payable to DRS/Fund 235. If the surplus exceeds the service cost DRS will not participate. ~~Individuals earning above the income guidelines will contribute an amount of $1.00 for each 1% above the allowable income levels toward procurement of the equipment. All income and resources will be evaluated on an annual basis if services are continuing.~~

(4) **Disposal of unused telecommunications equipment and assistive communication devices.** As with hearing aids, service recipients will be encouraged to return useable equipment to DRS if no longer needed.

PART 3. CERTIFICATION OF INTERPRETERS

612:10-13-16. Evaluation

(a) **Evaluation components and conditions.** To be certified as an interpreter, an individual must ~~be a resident of Oklahoma and~~ pass an evaluation. The evaluation (QAST) for certification consists of a written examination and a performance evaluation. The evaluation will include items on the Oklahoma Quality Assurances Code of Ethics. Candidates can take the evaluations for Levels I/II/III and Level IV/V on the same testing date, provided the candidate submits separate applications and pays the current fee for both tests. The candidate forfeits the fee for Level IV/V testing if he or she fails to achieve Level III certification. Interpreters who hold Level III certification in either Interpreting or Transliterating may go on to test for Level IV/V.

(b) **Written examination.** The written examination consists of questions designed to measure knowledge of interpreting and situational ethics. ~~The applicant~~Applicants must make a passing score, as established by QAST, ~~on the written examination~~ before being allowed to take the performance evaluation. ~~If a failing score is obtained the test may be retaken after a six month period has lapsed.~~ The written exam consists of questions designed to measure knowledge of interpreting and situational ethics. Retesting may be taken only after a six-month waiting period. The applicant may only take the written test three (3) times. After the 3rd unsuccessful try, the applicant can no longer sit for the written test.

(c) **Performance Evaluation.** The performance evaluation consists of a personal interview conducted by the evaluation team and a proficiency test. This will test both the applicants ability to interpret and transliterate. Individuals may request testing for levels I, II, III or levels IV/V. If a failing score is obtained the candidate must wait six months before retesting in the same category. The six month waiting period is waived for individuals who achieve Level III and apply to test for Level IV/V. In this case, application will be accepted for the next available testing date. Different tests will be used for each category. Certification will be granted to an individual whose total score falls within the acceptable range for that level.

612:10-13-17. Evaluation team

The evaluation team will consist of ~~three~~four persons~~, one of whom should be a person who is deaf~~ with effort given to have one deaf evaluator on each panel. ~~Other~~ Hearing members of the evaluation team must hold a minimum of RID: CSC, CI & CT or NAD 5.~~be nationally certified interpreters or State Certified Level V interpreters who have previously been~~ Hearing and deaf evaluators must have been previously trained and have participated in interpreter evaluations. Evaluation team members will be selected from a list of qualified individuals prepared by the Department.

612:10-13-18. Fees

A fee will be charged to each applicant who applies for the ~~initial~~ written test~~,~~ and performance evaluation ~~and all upgrade evaluations~~ for state certification of an interpreter for the deaf. A yearly certification maintenance fee will also be charged. The fee structure will be based on the cost of the evaluations, materials and certificate maintenance program. ~~This fee structure is available upon request by contacting the QAST Administrators, Department of Rehabilitation Services.~~ The fee for the written test is $50.00. The fee for performance evaluation is $100.00. The yearly certification maintenance fee is $40.00. Out of state residents may take the written/performance test for double the fee.

612:10-13-19. Refunds

Fees paid for performance ~~and upgrade~~ evaluations may be refunded, provided, the request to cancel is submitted in writing at least ~~one week~~ two weeks prior to the scheduled date of the performance evaluation. An applicant may request to reschedule the date of the performance evaluation two weeks prior. The new date must be within one year of the originally scheduled performance evaluation or the fee is forfeited.

612:10-13-20. Certification maintenance

Certification for levels I, II, and III are good for a period of two years at which time the certification will expire or the interpreter may re-test. ~~Individuals must be re-tested at the end of the two year period.~~ Level IV certifications are good for a five year period at which time the certification will expire or the interpreter may re-test. Interpreters are permitted to re-test before their certification has expired. ~~Re-test is required after that time.~~ Certification will remain valid for an interpreter who has applied for re-evaluation and cannot be scheduled for testing prior to his/her certificate's expiration date provided the application is received no later than 90 calendar days before the expiration date. Persons who hold Level V certification are considered to be permanently certified. However, certification will lapse if maintenance fees are not paid and/or continuing education requirements are not met. Individuals who have allowed either State Level IV/V or National certification to lapse must first successfully test for and receive Level III certification before applying for Level IV/V testing.

612:10-13-21. Code of ethics

Each individual shall agree to abide by the Oklahoma Quality Assurances Code of Ethics presented in (1) through (8) of this Subsection as a condition of certification.

(1) The interpreter/transliterator shall be dedicated to providing competent interpreting services in a manner befitting a professional.

(A) The interpreter/transliterator shall conduct him/herself in a manner which will reflect high standards of professionalism. This requires proper behavior suitable to the circumstances of the interpreting assignment.

(B) The interpreter/transliterator will dress appropriately to the circumstances of the interpreting assignment. Dress will be as unobtrusive as possible, and care will be taken to avoid cloth patterns or accessories which would interfere with clear perception of the consumer(s) through distraction or poor foreground/background contrast.

(C) The interpreter/transliterator will, to the maximum extent possible, choose positioning of themselves to avoid distracting backgrounds or inadequate lighting, and within comfortable visual/audible range of the consumer(s).

(D) The interpreter/transliterator will request compensation for services in a professional and judicious manner. The interpreter/transliterator will be knowledgeable of fees commensurate with their level of skill, level of certification, length of experience, and nature of the interpreting assignment, as well as fees customary to the geographic region.

(2) The interpreter/transliterator uses discretion in accepting assignments based upon language competency with regard to the setting and/or consumers involved.

(A) The interpreter/transliterator will base acceptance of assignments upon his/her qualifications to handle the English language characteristically utilized in any given situation. If an interpreter/transliterator cannot understand the English language used, nor express it in sign language, or cannot maintain an acceptable pace, the interpreter/transliterator should not accept the assignment.

(B) ~~Prior to accepting an assignment, the interpreter/transliterator~~ The best practice for a professional interpreter/transliterator will be to make every reasonable effort to assess the language skills of the consumer(s) involved to determine his/her ability to understand and be understood in the given assignment by asking appropriate questions of the requestor of services, without asking the identity of the consumer. If this assessment prior to acceptance is not possible, the interpreter/transliterator should arrive at the assignment early to assess the language skills taking care that the communication exchange is not assignment related. At this time, the interpreter/transliterator may decide to proceed with the assignment, or decline the assignment. If the assignment is declined prior to the assignment, or later during the assignment, assistance may be required in securing a more qualified interpreter to take the assignment at that time, or at a later scheduled time.

(C) When the only available interpreter/transliterator does not possess the needed skill level for a given assignment, the consumer(s) should be informed of these limitations so that a reasonable decision about accepting or declining the assignment can be made by all involved.

(D) The interpreter/transliterator should be familiar with statutory requirements regarding interpreter qualifications in a state before accepting an assignment in that state which might require a higher level of certification.

(3) The interpreter/transliterator uses discretion in accepting assignments based upon the capacity to maintain impartiality with regard to the setting and/or consumers involved.

(A) The interpreter/transliterator should accept assignments only when the interpreter/transliterator feels comfortable dealing with the content of the communication in an impartial manner. If the personal feelings or beliefs of the interpreter/transliterator would interfere with rendering the message accurately, the interpreter/transliterator should withdraw from the assignment.

(B) Interpreters/transliterators should refrain from providing interpreter services in situations where family members, or close personal or professional relationships may affect impartiality. Emergency situations may compel an interpreter/transliterator to provide services for family, friends, or close associates.

(C) Interpreters/transliterators should strive for complete neutrality between consumers in the interpreting assignment. This neutrality can be

compromised for various reasons. Whenever neutrality is compromised, it is the obligation of the interpreter/transliterator to assure that all affected consumers are duly advised and given the option of declining the interpreter/transliterator assignment.

(4) The interpreter/transliterator shall judiciously ~~safeguards~~safeguard assignment-related information ~~of a confidential nature~~ because it is confidential.

(A) A full-time interpreter/transliterator may provide information to his/her employer or other appropriate staff for purposes of record keeping, program management, or supervision without breaching confidentiality.

~~(B) Unless the consumer directs otherwise, a free lance interpreter/transliterator may disclose factual information regarding the interpreter assignment to the payee, or to the designee of the payee. The interpreter/transliterator should not comment beyond the reporting of factual data by providing opinions or recommendations which assume an overall expertise in the field of deafness. Disclosure of further information, when deemed necessary and appropriate, requires the informed consent of the consumer(s) before any further discussion takes place.~~

(~~C~~B) The right to privacy is inalienable for all citizens. The interpreter/transliterator has a fundamental obligation to safeguard any confidential information acquired from any source during an interpreter assignment. Injudicious disclosures of confidential information could adversely affect the consumer's reputation, and expose the interpreter/transliterator to liability.

(~~D~~C) The interpreter/transliterator should consult legal counsel when in doubt concerning disclosure in a court of law, and professional rights and responsibilities.

~~(E) Public information gained while interpreting is not considered confidential. The identity of the consumer(s) served is not to be revealed directly or indirectly through discussion of the details of an assignment in which such public information was gained, unless the consent of the consumer involved was obtained first.~~

(5) The interpreter/transliterator shall provide information when necessary, to the consumers involved as to the role and appropriate use of the interpreter/transliterator. Assuring the education of consumers as to the proper use of an interpreter is a basic responsibility of the interpreter/transliterator. The experienced consumer may also provide such education. Consumer education should be succinct, and is best presented prior to an assignment to ensure a smooth communication exchange.

(6) The interpreter/transliterator conveys the content and affect of the communication transmitted using the language most easily understood by the persons involved in the communication/transaction.

(A) The interpreter/transliterator must transmit all communication in the exact way it is presented, conveying the speaker's intention. The interpreter/transliterator is not responsible for what is said or how it is said; only for conveying the message accurately and with the intended affect. The interpreter/transliterator shall withdraw from an assignment when his/her personal feelings interfere with rendering the message accurately with the intended affect.

(B) The interpreter/transliterator shall communicate in the manner most easily understood or preferred by the consumer(s), such as American Sign Language, Manually Coded English, finger spelling, gesturing, drawing, or writing.

(7) The interpreter/transliterator should not counsel nor interject personal opinion, but may exercise professional judgment in assessing whether or not communication is being understood and may also inform the consumers involved of available resources as appropriate.

(A) The interpreter/transliterator shall not step out of the role of communication facilitator by offering counsel or interjecting personal opinion. Exercising professional judgement and offering a professional opinion in assessing whether communication is being understood is not a breech of ethics.

(B) Recommending known and available resources to the consumer is considered within the professional role of the interpreter/transliterator. The interpreter's responsibility in this regard is only to inform in a courteous and helpful manner. It is the consumer's decision whether they wish to follow through with any recommendation.

(8) The interpreter/transliterator should pursue further knowledge and maintain competency in interpreting or transliterating skills. The interpreter/transliterator should strive to further knowledge and skills through active participation in workshops, professional meetings, interaction with professional colleagues, and reading of literature in the field.

612:10-13-24. QAST Advisory Committee

(a) A QAST Advisory Committee shall ~~be formed to ensure a smooth transition of certification duties from Oklahoma Interpreter Association to the Department of Rehabilitation Services~~ serve in an advisory capacity to provide expert assistance in maintaining the integrity of the QAST system. The committee will communicate the needs and concerns of the interpreting community as applies to QAST as well as convey current industry standards. The QAST Advisory Committee shall also participate in selecting grievance board members.

(b) The QAST Advisory Committee shall consist of those individuals as defined by 612:10-13-17.~~:~~

~~(1) six individuals who are trained evaluators;~~

~~(2) two consumers who are deaf; and~~

~~(3) an OKRID representative who is a QAST level V or nationally certified interpreter.~~

(c) QAST Advisory Committee members will be chosen from a pool of qualified applicants by the Department of Rehabilitation Services. ~~The OKRID representative will be chosen by the OKRID membership.~~ Members serve terms of two years, and may serve consecutive terms. Meetings will be held at least once annually, or as needed.

~~(d) The first QAST Advisory Committee shall consist of the Oklahoma Interpreter Association officers serving at the time of transfer of duties to the Department. The OKRID representative will be selected at the OKRID annual meeting for 1994. The two consumer representatives will be appointed before the OKRID annual meeting for 1994.~~

[OAR Docket #04-796; filed 5-3-04]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 20. SPECIAL SCHOOLS

[OAR Docket #04-797]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Contracted instructional personnel
612:20-2-1. Purpose [AMENDED]
612:20-2-13. Dismissal/Nonreemployment Hearing [AMENDED]
612:20-2-17. Full-time administrators; Appeal of dismissal or nonreemployment [AMENDED]
612:20-2-31. Reduction in Force for Contracted Instructional Personnel [NEW]
AUTHORITY:
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The changes to Chapter 20 involve clarifying Teacher's and Administrator's rights to trial de novo and creating Contract Instructional Reduction in Force policy.

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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, 2004:

SUBCHAPTER 2. CONTRACTED INSTRUCTIONAL PERSONNEL

612:20-2-1. Purpose

The Department of Rehabilitation Services contracts for the employment of teachers and other instructional personnel at the Oklahoma School for the Blind and the Oklahoma School for the Deaf. Contracted instructional personnel are considered to be employees of the Department but are not subject to the Oklahoma Personnel Act. The purpose of this Subchapter is to establish personnel policies for contracted instructional personnel similar to those applicable to public school districts in accordance with 10 O.S. 1419 ~~(C)~~(e). The policies in this Subchapter pertain exclusively to employees as listed at 10 O.S. 1419 (B). These employees are not subject to the Department's personnel policies in Chapter 3 of this Title unless the context clearly indicates otherwise.

612:20-2-13. Dismissal/Nonreemployment Hearing

(a) When the Director receives a recommendation from the Superintendent that a teacher be dismissed or not reemployed pursuant to OAC 612:20-2-12, the Director shall send a Notice of Dismissal/Nonreemployment Hearing to the teacher. The notice shall be sent by certified mail, restricted delivery, return receipt requested, or by substitute process as provided for by law.

(1) The notice shall include a copy of the Superintendent's recommendation and the date, time and place of the hearing. The date of the hearing shall be no sooner than twenty (20) days or no later than sixty (60) days after the teacher's receipt of the notice.

(2) The notice shall specify the policy grounds as provided for at OAC 612:20-2-8(3) upon which the recommendation is based for career teachers and the cause upon which the recommendation is based for probationary teachers. The notice shall also specify the underlying facts supporting the recommendation.

(b) The Director shall assign the hearing to an independent Hearing Officer. The hearing shall be conducted as an individual proceeding pursuant to the Oklahoma Administrative Procedures Act (75 O.S. § 250 et seq.).

(c) The Director shall also designate a person as the Hearing Coordinator who shall facilitate communication between the parties and the Hearing Officer.

(d) The parties may conduct discovery as provided for in the Oklahoma Administrative Procedures Act. Such discovery may include written interrogatories, document requests, depositions and any other discovery device permitted by law.

(e) The Hearing Coordinator shall schedule a pre-hearing conference between the parties and the Hearing Officer at which time the parties shall submit witness lists and any requests for subpoenas. The Hearing Officer shall issue subpoenas pursuant to the Oklahoma Administrative Procedures Act. If a party fails to obey a subpoena, the Hearing Officer may apply to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony.

(f) At the hearing, the standard of proof shall be by the preponderance of the evidence and the burden of proof shall be on DRS to establish that the teacher's dismissal or nonreemployment is warranted.

(g) At the hearing, in the absence of any other arrangements made by the parties and the Hearing Officer, the order of the proceedings shall be as follows:

(1) Opening statement by DRS.

(2) Opening statement by the teacher.

(3) Presentation of the case by DRS, including the examination and cross-examination of witnesses.

(4) Presentation of the case by the teacher, including the examination and cross-examination of witnesses called by the teacher.

(5) Closing statement by DRS.

(6) Closing statement by the teacher.

(h) The hearing shall be tape-recorded and a copy of the tape shall be provided the teacher upon request.

(i) Within seven (7) calendar days following the conclusion of the hearing, the Hearing Officer shall prepare written findings of fact and conclusions of law separately stated and shall issue a decision as to whether the dismissal or nonreemployment be affirmed or denied. The findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. (j) The Director shall review the Hearing Officer's decision as well as the record of the case and shall issue a final agency order regarding the dismissal or nonreemployment of the teacher.

(k) The teacher may seek a rehearing, reopening or reconsideration of the final order pursuant to the Oklahoma Administrative Procedures Act at 75 O.S. § 317.

(l) ~~The teacher may seek judicial review of the Hearing Officer's decision pursuant to the Oklahoma Administrative Procedures Act at 75 O.S. § 318~~In the event that a career teacher is dismissed or the career teacher's contract is not renewed, the Director shall notify the teacher of the right to trial de novo within ten (10) days of the receipt of the final order of the Director. The petition for a trial de novo must be filed within 10 days of receipt of the final order of the Director.

612:20-2-17. Full-time administrators; Appeal of dismissal or nonreemployment

(a) Whenever the Director, Deputy Director or Superintendent shall determine that the dismissal or nonreemployment of an administrator from his/her administrative position should be effected, the administrator shall be notified in writing of the proposed action. The notice shall state the reason(s) for taking the action and shall inform the administrator of his/her right to a hearing before the Director or the Director's designee prior to the dismissal or nonreemployment.

(b) The administrator may request a hearing within ten (10) calendar days after receipt of the notice of proposed dismissal or nonreemployment. If the administrator fails to request a hearing within the ten-day period, then the administrator will have waived the right to such a hearing. The request for a hearing shall be made in writing to the Director and sent by certified mail, return receipt requested, or by substitute process as provided for by law.

(c) Upon the receipt of a timely request, the Director shall schedule a hearing to take place no more than ten (10) calendar days after receipt of the request. The Director shall notify the administrator of the hearing by certified mail, return receipt requested, or by substitute process as provided for by law. The notice shall include a statement of the reasons for the recommendation for dismissal or nonreemployment, the facts underlying the recommendation, and a statement of the legal authority and jurisdiction under which the hearing is to be held.

(d) The Director or the Director's designee shall serve as the hearing officer. The hearing shall be an individual proceeding pursuant to the Oklahoma Administrative Procedures Act (70 O.S. § 250 et seq). Discovery may be conducted by the parties pursuant to the Oklahoma Administrative Procedures Act. The hearing officer shall be authorized to issue subpoenas pursuant to 75 O.S. § 315.

(e) The hearing shall be tape-recorded and a copy of the tape shall be provided the administrator upon request.

(f) If the hearing officer is the Director's designee:

(1) The hearing officer shall deliver to the Director a decision within three (3) workdays after the conclusion of the hearing. The decision shall include findings of fact and conclusions of law, separately stated. The hearing officer shall decide by a preponderance of the evidence whether reason(s) exist for the dismissal or nonreemployment of the administrator.

(2) In deciding whether to dismiss or to not reemploy the administrator, the Director shall take the hearing officer's decision into consideration and shall independently review the record of the case. The Director shall issue a final agency order regarding the dismissal or nonreemployment of the administrator within five (5) workdays after the date of the hearing officer's decision. The Director shall notify the administrator of the order by certified mail, return receipt requested, or by substitute process as provided for by law. The order shall include findings of fact and conclusions of law separately stated.

(g) If the Director serves as the hearing officer, the Director shall issue a final agency order regarding the dismissal or nonreemployment of the administrator within five (5) workdays following the conclusion of the hearing. The Director shall notify the administrator of the order by certified mail, return receipt requested, or by substitute process as provided for by

law. The order shall include findings of fact and conclusions of law separately stated.

(h) The administrator may seek a rehearing, reopening or reconsideration of the final order pursuant to the Oklahoma Administrative Procedures Act at 75 O.S. § 317.

(i) ~~The administrator may seek judicial review of the Director's decision pursuant to the Oklahoma Administrative Procedures Act at 75 O.S. § 318~~In the event that an administrator is dismissed or the administrator's contract is not renewed, the Director shall notify the administrator of the right to trial de novo within ten (10) days of the receipt of the final order of the Director. The petition for a trial de novo must be filed within 10 days of receipt of the final order of the Director.

612:20-2-31. Reduction in Force for Contracted Instructional Personnel

(a) **Declining Enrollment.** If declining student enrollment in a given program area or serious financial shortfall makes it necessary to eliminate or consolidate positions held by contracted instructional personnel, the Department will follow the following procedure:

(1) Any necessary reduction in staff will, to the extent possible, be handled through normal attrition by voluntary retirements or resignations. In the event that a teacher's position is eliminated, the teacher will be transferred to a vacant position, if any, which he or she is certified to teach.

(2) Probationary teachers will be released based on reverse order of seniority before career teachers who are qualified to hold positions currently held by probationary teachers.

(3) If normal attrition and the release of probationary teachers who hold positions that career teachers are qualified to teach do not sufficiently reduce the certified staff, the following criteria will be considered in the reduction process in the order they are listed:

(A) Seniority at the School.

(B) Length of service in current assignment

(C) Academic and professional preparation beyond minimum certification requirements

(D) Total number of years teaching experience

(b) **Recall.** Staff will be recalled in reverse order of layoff. For one year after the effective date of termination pursuant to this procedure's provisions, the Department shall offer to a teacher who has been terminated all positions that become available for which he or she is certified in reverse order of layoff. The offer will be made by certified mail, return receipt requested, and the teacher will be notified that he or she must submit written acceptance within ten calendar days. No new teachers will be hired in a subject area or grade level until all laid off teachers qualified for the position have been recalled or decline the opening.

[OAR Docket #04-797; filed 5-3-04]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-856]

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675:1-1-1.1. Definitions [NEW]
675:1-1-3. Makeup of Board [AMENDED]
675:1-1-4. Officers of the Board [AMENDED]
675:1-1-5. Executive Secretary [REVOKED]
675:1-1-8. Meeting dates [AMENDED]
675:1-1-9. Fee schedule [NEW]
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Chapter 1 sets forth the administrative operations, including fees, of the Board. Amendments were made to comply with changes in the Social Workers Licensing Act that became effective November 1, 2003.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #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 JULY 1, 2004:

675:1-1-1.1. Definitions

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Educational supervision" means face to face interaction between the supervisor and supervisee.

"LCSW" means licensed clinical social worker.

"LMSW" means licensed masters social worker.

"LSW" means licensed social worker (advanced generalist).

"LSW-Adm" means licensed social worker with a specialty of administration.

"LSWA" means licensed social worker associate.

675:1-1-3. Makeup of Board

There shall be seven (7) members of the Board. Three of the members of the Board shall be licensed social workers or licensed clinical social workers licensed under this law. Two other members shall be licensed social work associates and/or licensed masters social workers. One member shall be the president of the Oklahoma Chapter of the National Association of Social Workers. The remaining member of the Board shall be selected from and shall represent the general public.

675:1-1-4. Officers of the Board

The Oklahoma State Board of Licensed Social Workers shall elect a chairman, vice-chairman, and secretary ~~and treasurer~~. Election of officers will occur ~~at the first meeting of the Board after October 1, 1980 and will be~~ on an annual basis ~~after that date~~.

675:1-1-5. Executive Secretary [REVOKED]

~~(a) At the first meeting of the Board after October 1, 1980 the Executive Secretary will be selected and appointed and will be reappointed on an annual basis by the Board.~~

~~(b) The powers and duties of the Executive Secretary of the Oklahoma State Board of Licensed Social Workers are established as follows:~~

~~(1) Record the minutes of all proceedings of the Board and keep such financial records as are necessary;~~

~~(2) Keep an updated register of all persons and their addresses who are licensed under these provisions;~~

~~(3) Upon recommendation of the Board, institute such civil or criminal proceedings as the Board determines necessary or appropriate;~~

~~(4) Provide licensure materials, receive and review for completeness all documentation provided by applicants and submit to the Board for approval, and fulfill other necessary steps to coordinate the process;~~

~~(5) Enforce rules and regulations for professional conduct of licensed social workers prescribed by the Board; and~~

~~(6) Perform such other duties as the Board may prescribe that are necessary to the daily operation of the affairs of the Board.~~

~~(c) The Board may, at its discretion, appoint additional staff to assist the Executive Secretary in carrying out the duties as set forth in the law.~~

675:1-1-8. Meeting dates

~~Meetings of the Oklahoma State Board of Licensed Social Workers will be as follows: The Board shall meet on the first Tuesday in January of each year and the first Tuesday in July of each year,~~ The Board shall meet at least once every three months and shall be available for called meetings at the pleasure of the Chairman or by a quorum of four members. Meetings shall be in accordance with the provisions of the Open Meeting Law for the State of Oklahoma.

675:1-1-9. Fee schedule

(a) **Fees.**

(1) Licensure:

(A) Application processing fee - $150.00

(B) Criminal background check - at cost

(2) Renewal:

(A) Renewal of license - $100.00

(B) Late fee - $50.00

(3) Continuing education fees:

(A) Annual continuing education providers application fee - $200.00 (Any fees paid in the year 2004 and prior to the effective date of this rule may be applied up to the annual fee for year 2004.)

(B) Annual web-site link to provider - $25.00

(C) Licensee request for program/event approval - $40.00 each

(4) Miscellaneous:

(A) Duplicate or replaced license certificate - $25.00

(B) Duplicate renewal card - $10.00

(C) Written verification of licensure - $20.00

(D) Duplication of public records - $0.25 per page

(E) Application for Board Approved Supervisor - $150.00

(F) Investigation/prosecution - at cost incurred

(G) Probation - $100.00 per month

(H) Returned check processing fee - $50.00

(b) **Submission of fees.**

(1) All fees assessed by the Board as set out in this section shall be received prior to processing an application.

(2) All fees are non-refundable.

[OAR Docket #04-856; filed 5-7-04]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 3. INDIVIDUAL PROCEEDINGS

[OAR Docket #04-860]

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675:3-1-1. Purpose [NEW]
675:3-1-2. Definitions [NEW]
675:3-1-3. Complaint procedure [NEW]
675:3-1-4. Procedures for denials, revocations, suspensions [NEW]

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This is a new Chapter that establishes the procedures used in the investigation of complaints, disciplinary hearings before the Board and Individual Proceedings.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #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 JULY 1, 2004:

675:3-1-1. Purpose

The purpose of this Chapter is to set forth the procedures of the Board used in the investigations of and hearings held for complaints and for individual proceedings.

675:3-1-2. Definitions

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

"Act" means the Social Worker's Licensing Act, 59 O.S., §§ 1250, et seq., as amended

"APA" means Article I and/or Article II of the Administrative Procedures Act, 75 O.S.§ 250, et seq.

"Board" means the Oklahoma State Board of Licensed Social Workers.

"Citizen complaint" means a written statement of alleged violation of the Act by a person licensed or certified by the Board and submitted to the Board office by any member of the public.

"Formal complaint" means a written statement of alleged violation of the Act by a person licensed or certified by the Board and which is filed by the Board office in anticipation of a hearing and/or discipline.

"Hearing" means the mechanism employed by the Board to provide Due Process to a respondent in an individual proceeding.

"Individual proceeding" means the formal process by which the Board takes administrative action against a person licensed or certified by the Board in accordance with the Act and the APA.

"Respondent" means the person against whom an individual proceeding is initiated.

"Staff" means the personnel of the Board, through employment or contract.

675:3-1-3. Complaint procedure

(a) **Receiving complaints.** The Board shall receive complaints against licensees through the mail or in person at the Board office. Only written complaints shall be accepted for consideration, unless extenuating circumstances exist. The written request may be anonymous. Upon receipt of the complaint, the Board staff shall:

(1) stamp all pages with a Board stamp which indicates the date of receipt,

(2) review the complaint to determine if the person against whom the complaint is registered is a current licensee,

(3) log the complaint, assigning a number consisting of the year and sequence number in which it was received; further, recording the date received, name of complainant (if provided), and the name and license number of licensee,

(4) generate a letter to the complainant indicating receipt and review of the complaint by the Board officials (if applicable),

(5) place the complaint in a pending file,

(6) notify the Board chair or chair's designee, a former or current Board member appointed by the Chair, and the Attorney General Liaison (hereinafter referred to as the "Complaint Committee") of receipt of a complaint.

(b) **Reviewing complaints.** Upon notification that a complaint has been received, the Complaint Committee shall review the contents to determine whether or not the allegation constitutes a possible violation of the Code of Professional Conduct. If the allegation does not indicate a possible violation of this code, the Complaint Committee shall instruct the Board staff to generate a letter to the complainant thanking them for their concern and advising them that the complaint does not fall within the purview of the Board. If the allegation does indicate a possible violation of this code, the Complaint Committee shall make the following determination:

(1) The alleged violation appears to be one which would not, if found to be valid, result in a denial, revocation or suspension of a license, as specified in Section 675:3-1-3 of this Chapter, but one which does indicate the need for Board review and possible informal action.

(2) The alleged violation appears to be one which could, if found to be valid, result in a denial, revocation or suspension of a license, as specified in Section 675:3-1-3 of this Chapter.

(c) **Allegations, if substantiated, not appearing to result in a denial, revocation or suspension of a license.** If an alleged violation appears to be one which would not result in a denial, revocation or suspension of a license, the chair or chair's designee shall proceed with addressing the allegation by reviewing the complaint with the Attorney General liaison for the Board. Upon the consent of the chair or chair's designee and the advice of the Attorney General liaison, the chair or chair's designee shall proceed by:

(1) Notification of the licensee by certified mail that a complaint has been received, outlining the nature of the complaint.

(2) Forwarding to the licensee a copy of the informal process for addressing complaints, which requires:

(A) a prompt letter to the Board from the licensee responding to the merits of the complaint;

(B) an informal interview with the Board to fully explore the issues involved in the complaint;

(C) an agreement by the Board and the licensee on the merits of the complaint;

(D) a Consent Decree for disciplinary action for the licensee, approved by the Board and signed by the licensee and the chair or chair's designee, which may include one or more of the following:

(i) a letter of education instructing the licensee to correct the aspect of practice in question;

(ii) a tutorial assigned to the licensee to remedy the practice in question, under the supervision of a Board Approved Supervisor assigned by the Board, with the wishes and needs of the licensee taken into consideration;

(iii) a letter of censure disciplining the licensee for the practice in question;

(E) a review of the Consent Decree with the complainant, with consideration given to any disagreement the complainant may have to the course of remedial action;

(F) a review of the course of action in a specified time, not longer than six months, to determine whether or not remediation has taken place;

(G) a letter to the licensee indicating that the informal process has ended.

(3) Referral to the formal investigation process when:

(A) the licensee fails to respond to the certified letter from the Board;

(B) the informal process reveals new or expanded allegations that indicate the possibility of a denial, revocation or suspension of a license;

(C) the licensee fails to meet the requirements of the educational letter or the tutorial without good cause.

(d) **Allegations, if substantiated, appearing to result in a denial, revocation or suspension of a license.** If an alleged violation appears to be one which would result in a denial, revocation or suspension of a license, the Complaint Committee shall proceed with addressing the complaint by the process detailed below based upon agreement of at least two members:

(1) Contacting an investigator designated by the Board as qualified to address the nature of the complaint.

(2) Providing the designated investigator with names and addresses of the complainant, if available, and the licensee.

(3) Issuing a letter of intent that specifies:

(A) the intended parameters of the investigation;

(B) the individuals to be interviewed;

(C) the contract fee and travel reimbursement, as allowed by statute;

(D) the time frame for completing the investigation.

(4) Indicating whether or not the licensee should be interviewed by the contract investigator, in reference to:

(A) advice by the Attorney General liaison not to do so in order to reserve the interview with the licensee in a setting under oath;

(B) the possibility of a criminal investigation being conducted concurrently or subsequently to the Board investigation.

(5) Submitting the investigative report to the Complaint Committee for review and recommendation to the Board concerning proposed action to be taken concerning the complaint.

(6) Placing the complaint on the agenda for the next Board meeting for report on the status of the complaint and possible action by the Board. Possible actions by the Board would include:

(A) a dismissal of the complaint due to lack of evidence of a code violation;

(B) a referral to the informal process due to a finding that the results of the investigation reveal code violations, but not ones that would result in the need for denial, revocation or suspension;

(C) a decision to hold a hearing as provided for in Section 675:3-1-3 of this Chapter.

675:3-1-4. Procedures for denials, revocations, suspensions

(a) **When a hearing is required.** The Board shall hold a hearing when it considers that there is cause to deny, revoke or suspend any license (or specialty certification) issued by the Board or applied for in accordance with the Social Worker's Licensing Act or otherwise to discipline a licensee. The hearing will determine whether or not the person:

(1) Has been convicted of a felony and, after investigation the Board finds that he or she has not been sufficiently rehabilitated to meet the public trust;

(2) Has been found guilty of fraud or deceit in connection with services rendered or in establishing needed qualifications under this act;
(3) Has knowingly aided or abetted a person, not licensed under these provisions, in representing himself or herself as licensed in this state;
(4) Has been found guilty of unprofessional conduct as defined by rules established by the Board;
(5) Has been found guilty of negligence or wrongful actions in the performance of his or her duties;
(6) Is unable to function because of addiction to alcohol, drugs or other chemicals;
(7) Is unable to function because of physical or mental illness;
(8) Has not properly performed because of illegal disclosure of confidential information without proper authority;
(9) Conduct which violates the security of any licensure examination materials;
(10) Being the subject of the revocation, suspension, surrender or other disciplinary sanction of a social worker or related license or of other adverse action related to a social worker or related license in another jurisdiction or country including the failure to report such adverse action to the Board; or
(11) Being adjudicated by a court of competent jurisdiction, within or without this state, as incapacitated, mentally incompetent, chemically dependent, mentally ill and dangerous to the public or a psychopathic personality.

(b) **Hearing procedures.** Hearing procedures to be followed shall be in accordance with the Administrative Procedures Act, 75 O.S., §309-323.

[OAR Docket #04-860; filed 5-7-04]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 10. LICENSURE REQUIREMENTS

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Jan Ewing, Deputy Director, 405-848-6841, #104

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675:10-1-1. Purpose

This chapter describes the requirements for licensure ~~and procedure for the denial, revocation or suspension of a license~~.

675:10-1-1.1. Approved Social Work Programs

The Board approves social work programs that are accredited by the Council on Social Work Education (CSWE). For international programs, a decision will be made on a case by case basis in consultation with and in conjunction with the CSWE.

675:10-1-1.2. Requirements for Licensed Clinical Social Worker

The Board shall authorize the issuance of licenses to persons who qualify as follows:
(1) as a LCSW who has a master's degree in social work from a Board approved social work program and has two (2) years of fulltime post degree experience or the equivalent thereto of part-time experience, a total of 4,000 hours, of experience in the practice of social work under professional supervision of a Board Approved Supervisor. This experience shall include at least 100 hours of educational supervision by the supervisor. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluation,
(2) passed the examination provided for under the provisions of Section 675:10-1-10, and
(3) is of good moral character.

675:10-1-1.3. Requirements for Licensed Master's Social Worker

The Board shall authorize the issuance of licenses to persons who qualify as follows:

(1) as a Licensed Social Worker who has a master's degree in social work from a Board approved social work program,

(2) passed the examination provided for under the provisions of Section 675:10-1-10, and

(3) is of good moral character.

675:10-1-2. Requirements for Licensed Social Worker

~~Upon certification by the Executive Secretary to the Board, the~~ The Board shall authorize the issuance of licenses to persons who qualify as follows:

(1) as a Licensed Social Worker who has a ~~doctoral or~~ master's degree in social work from a Board approved social work program ~~an institution with a program accredited by the Council on Social Work Education~~ and has two (2) years of fulltime post degree experience or the equivalent thereto of part-time experience, a total of 4,000 hours, of experience in the practice of social work under professional supervision of a Board Approved Supervisor ~~person licensed under Section 675:10-1-2~~. This experience shall include at least 100 hours of educational supervision by ~~a person licensed under 675:10-1-2~~ the supervisor. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluation, ~~and~~

(2) passed the examination provided for under the provisions of Section 675:10-1-10, and~~.~~

(3) is of good moral character.

675:10-1-2.1. Requirements for Licensed Social Worker-Administration

The Board shall authorize the issuance of licenses to persons who qualify as follows:

(1) as a LSW-Adm who has a master's degree in social work from a Board approved social work program and has two (2) years of fulltime post degree experience or the equivalent thereto of part-time experience, a total of 4,000 hours of experience in the practice of social work under professional supervision of a Board Approved Supervisor. This experience shall include at least 100 hours of educational supervision by the supervisor. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluation,

(2) passed the examination provided for under the provisions of Section 675:10-1-10, and

(3) is of good moral character.

675:10-1-3. Requirements for Licensed Social Work Associate

~~Upon certification by the Executive Secretary to the Board, the~~ The Board shall authorize the issuance of licenses to persons who qualify as follows:

(1) as a Licensed Social Work Associate who has a baccalaureate degree in social work from a Board approved social work program ~~an institution with a program accredited by the Council on Social Work Education~~ and has two (2) years of fulltime experience or the equivalent thereto of part-time experience, a total of 4,000 hours of experience, in the practice of social work under professional supervision of a Board Approved Supervisor ~~person licensed under Section 675:10-1-2~~ and passed the examination provided for under Section 675:10-1-10. This experience shall include at least 100 hours of educational supervision by ~~a person licensed under 675:10-1-2~~ the supervisor. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting requirements ~~or exceeding expectations~~ as defined on the forms approved by the Board, in all areas of evaluation or

~~(2)~~ who has a ~~doctoral or~~ master's degree in social work from a Board approved social work program ~~an institution with a program accredited by the Council on Social Work Education~~ and has passed the examination provided for under Section 675:10-1-10.

(2) is of good moral character.

675:10-1-3.1. License required

No person shall engage in the practice of social work as defined by law without having the legal possession of a current license.

675:10-1-4. Requirements for Private or Independent Social Work Practice

No person may engage in the private~~,~~ or independent practice of social work unless:

(1) licensed under this act as a LSW-Adm or LCSW ~~Licensed Social Worker~~

(2) has had 100 hours of educational supervision in no less than two (2) years of fulltime or the equivalent thereto of part-time experience, a total of 4,000 hours, supervised experience certified by the Board in the method to be offered in private practice and met the requirements set by the Board and

(3) ~~after January 1, 1983~~ shall continue to meet continuing education requirements set by the Board.

675:10-1-5. ~~Specialties~~Titles of licenses

~~(a) Applicants seeking specialty licensure may concurrently complete requirements for both the generic LSW and the specialty if supervision is contracted with a LSW with current licensure in the specialty sought.~~

(~~b~~a) ~~**Clinical Social Work Practice**~~**Licensed Clinical Social Worker.**

(1) **Definition.** Clinical social work is defined as practice which focuses on rendering services to individuals,

families, or groups of individuals that involve the evaluation, diagnosis, treatment, and prevention of emotional disorders and mental illness as related to the total health of the client system according to social work theory and methods, providing services of a psychosocial nature pertaining to personality adjustment, behavior problems, interpersonal dysfunctioning and deinstitutionalization. Such practice is based on knowledge of psychodynamics, human relations, human development, personality development, crisis intervention, psychopathology, and group dynamics to effect change in human behavior, emotional responses, and social conditions.

(2) **Setting.** Clinical social work is practiced within a private office or under the auspices of public, voluntary, or proprietary agencies and institutions addressing familial, economic, health, recreational, religious, penal, judicial and educational concerns.

(3) **Model of clinical social work practice.** Within the practice setting, the problem is identified, and a plan of intervention is designed and implemented with the client. The plan is supported by securing historical facts and clues to the latent forces within the individual that shape personality. Individual strengths in conjunction with community resources are activated and utilized to implement the client plan.

(4) **Education and experience criteria.** A ~~masters or doctoral~~ master's degree in social work from a Board approved social work program ~~school of social work accredited or recognized by the Council of Social Work Education~~; official transcripts must be received from all applicable schools attended; two (2) years of fulltime or the equivalent thereto of part-time experience, a total of 4,000 hours, of post graduate practice experience under the supervision of a licensed social worker with a clinical social work practice specialty which includes at least 3,000 hours of direct client contact; this experience shall include at least 100 hours of educational supervision in no less than two (2) years of fulltime related employment or the equivalent thereto of part-time employment. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluations. ~~If social work supervision could be shown to have been unavailable, then supervision must be contracted from a Board Approved Social Work Supervisor. If this supervision can be documented to be unavailable, then supervision may be provided by other licensed mental health professionals as defined in Title 43A of the Oklahoma Statutes with the added condition of giving evidence of continued participation and identification with the social work profession, with at least 3,000 hours of direct clinical practice within the last ten years.~~

~~(5) **Continuing education requirements.** Until December 31, 1999, all applicants who are applying for renewal of their specialty in Clinical Social Work Practice must document to the Oklahoma State Board of Licensed Social Workers that they have received a minimum of 12 clock hours of Board approved continuing education in their specialty during the past twelve months. After January 1, 2000, all applicants who are applying for renewal of their specialty in Clinical Social Work Practice must document to the Oklahoma State Board of Licensed Social Workers that they have received a minimum of 16 clock hours of Board approved continuing education in their specialty during the past twelve months.~~

(b) **Licensed Master's Social Worker.**

(1) **The practice of a Licensed Master's Social Worker (LMSW) means the application** of social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Master's Social Work practice requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, counseling, consultation, education, research, advocacy, community organization and the development, implementation, and administration of policies, programs and activities.

(2) The LMSW shall not engage in private practice or practice independently.

(c) **Licensed Social Worker.**

(1) The Licensed Social Worker (LSW) shall be able to perform the following functions:

(A) provide counseling to individuals, couples, families and groups directed toward specific goals;

(B) assist in helping individuals or groups with difficult day-to-day problems, such as finding employment, locating sources of assistance, or organizing community groups to work on a specific problem;

(C) consult with other agencies on problems and cases served in common and coordinate services among agencies helping multi-problem families;

(D) conduct basic data gathering on social problems;

(E) serve as an advocate for those clients or groups of clients whose needs are not being met by available programs or by a specific agency;

(F) assess, evaluate and formulate a plan of action based on client need;

(G) provide training to community groups, agencies and other professionals about health-care issues and community problems; and

(H) maintain familiarity with professional and self-help systems in the community and will assist the client in using those services when necessary.

(2) The LSW shall not engage in private practice or practice independently.

(~~c~~d) ~~**Social Work Administration**~~**Licensed Social Worker-Adm.**

(1) **Definition.** Social work administration is defined as practice which focuses primarily on directing the development and/or management of social service delivery

systems. Such practice is based on knowledge of organization theory, policy development, program management, personnel management, fiscal management, and public relations. Such practice is based on skills necessary for organizing, directing, supervising, staffing, program planning and program evaluating.

(2) **Setting.** Social work administration is practiced within a private setting or under the auspices of public, voluntary or proprietary agencies or institutions addressing familial, economic, health, recreational, religious, penal, judicial and educational concerns.

(3) **Model of social work administration practice.** Within the practice setting, supervises program directors and program staff to insure that personnel, program and/or licensing standards are met and maintained and that staff members grow in skill and efficiency; develops program goals and insures that all program activities and procedures comply with regulations; interprets the services and promotes the image of the programs through regular communication with appropriate groups and individuals in order to maintain a broad base of support; manages budgets to insure a balanced and fiscally sound program is maintained.

(4) **Education and experience criteria.** A master's ~~masters or doctoral degree~~ in social work from a school of social work approved by the Board ~~accredited or recognized by the Council on Social Work Education~~; official transcripts must be received from all applicable schools attended; two years of full-time post ~~masters~~ master degree related experience or the equivalent thereto of part-time experience, a total of 4,000 hours, in the delivery of social work administration. This experience shall include at least 100 hours of educational supervision under a Licensed Social Worker with a Social Work Administration specialty in no less than two (2) years of fulltime related employment or the equivalent thereto of part-time employment. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluations. ~~If social work supervision can be shown to have been unavailable, then supervision must be contracted from a Board Approved Social Work Supervisor. If this supervision can be documented to be unavailable, then supervision may be provided by other licensed mental health professionals as defined in Title 43A of the Oklahoma Statutes with the added condition of giving evidence of continued participation and identification with the social work profession.~~

~~(5) **Continuing education requirements.** Until December 31, 1999, all applicants who are applying for renewal of their specialty in Social Work Administration must document to the Oklahoma State Board of Licensed Social Workers that they have received a minimum of 12 clock hours of Board approved continuing education in their specialty during the past twelve months. After January 1, 2000, all applicants who are applying for renewal of their specialty in Social Work Administration must document to the Oklahoma State Board of Licensed Social Workers that they have received a minimum of 16 clock hours of Board approved continuing education in their specialty during the past twelve months.~~

~~(d) Social Planning and Community Organization.~~

~~(1) **Definition.** Social planning and community organization is defined as practice which deals with intervention at the community level, oriented at involving community institutions and solving community human, social, and welfare problems. Such practice is based on knowledge of community organization and development, social planning, policy analysis and social action. Such practice is based on skills necessary for social planning, program development, evaluation, advocacy, ombudsmanship, legislative activity, facilitation, and social mediation.~~

~~(2) **Setting.** Social planning and community organization may be practiced within private or public settings in urban or rural areas, at local, state, regional, or federal levels. In such settings the whole realm of socio cultural problems may be addressed within the context of a professional problem solving model, which adheres to professional ethics and is based upon a humanitarian philosophy.~~

~~(3) **Model of social planning and community organization practice.** Within the practice setting, the social worker functions as a facilitator and/or advocate at the macro level, who involves relevant groups, individuals, and institutions, at all levels within the community in a problem solving process which incorporates specific actions based upon the following tasks: a needs assessment utilizing professional principles and knowledge is completed as a first step toward defining community problems and issues to be addressed. With the first step of the process efforts are made to involve the community in a collaborative work program directed toward mobilization of community resources to be committed toward problem solutions. Following the needs assessment, a planning process is implemented to develop a comprehensive coordinated plan for implementation, and for continuing evaluation and involvement of community leaders, other professionals, supporting agencies and individual citizens. It is recognized that this is an ongoing process which stimulates creative change and positive growth in the targeted community area.~~

~~(4) **Education and experience criteria.** A masters or doctoral degree in social work from a school of social work accredited or recognized by the Council on Social Work Education; official transcripts must be received from all applicable schools attended, two years of fulltime post masters degree experience or the equivalent thereto of part-time experience, a total of 4,000 hours, in the delivery of social planning and community organization services. This experience shall include at least 100 hours of educational supervision under a Licensed Social Worker with a Social Planning and Community Organization specialty in no less than two (2) years of fulltime employment or the equivalent thereto of part-time employment. Ratings on the final evaluations completed by supervisor(s) must document~~

~~performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluations. If social work supervision can be shown to have been unavailable, then supervision must be contracted from a Board Approved Social Work Supervisor. If this supervision can be documented to be unavailable, then supervision may be provided by other licensed mental health professionals as defined in Title 43A of the Oklahoma Statutes with the added condition of giving evidence of continued participation and identification with the social work profession.~~

~~(5) Continuing education requirements. Until December 31, 1999, all applicants who are applying for renewal of their specialty in Social Planning and Community Organization must document to the Oklahoma State Board of Licensed Social Workers that they have received a minimum of 12 clock hours of Board approved continuing education in their specialty during the past twelve months. After January 1, 2000, all applicants who are applying for renewal of their specialty in Social Planning and Community Organization must document to the Oklahoma State Board of Licensed Social Workers that they have received a minimum of 16 clock hours of Board approved continuing education in their specialty during the past twelve months.~~

(e) **Licensed Social Worker Associate.**

(1) The practice of a Licensed Social Worker Associate (LSWA) means the application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. LSWA basic generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, counseling, consultation, education, advocacy, community organization, and the development, implementation, and administration of policies, programs and activities.

(2) The LSWA shall not engage in private practice or practice independently.

675:10-1-6. Continuing education

(a) **Continuing education.**

(1) ~~After January 1, 1983 twelve (12)~~ As a requirement for license renewal, sixteen (16) clock hours of continuing education units shall be required for each ~~specialty~~ license held. These hours must have been obtained during the previous renewal period (January through December) and approved by the Board ~~on an annual basis~~. At least 3 hours must be categorized as ethics training as defined by the Board.

(~~b~~2) Approval of continuing education shall be at the discretion of the Oklahoma State Board of Licensed Social Workers and shall be in accordance with standards acceptable to the profession of social work.

(3) A licensee called to active duty in the armed forces of the United States for a period of time exceeding one hundred and twenty (120) consecutive days during a calendar year shall be exempt from obtaining the continuing education required during that calendar year.

(4) A licensee experiencing physical disability, illness or other extenuating circumstances may request partial or complete exemption from the continuing education requirements. The licensee shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis.

(5) Effective January 1, 2004 licensees who have passed the examination during the months of July through December may receive eight (8) hours of continuing education for that year. The remaining eight (8) hours must be in category 1 and include three (3) hours of ethics.

(b) **Audit/Verification.**

(1) Each applicant for renewal of license shall certify that he/she has completed the requisite hours of continuing education.

(2) The Board staff may, each year, randomly or for cause select licensees to be audited for verification that continuing education requirements have been met.

(3) Licensees selected for audit must submit verification of meeting the continuing education requirement with the renewal application.

(4) Failure to submit such records shall constitute an incomplete application and shall result in the application being returned to the licensee and the licensee being unable to practice.

(5) A license renewed through misrepresentation shall result in Board action.

675:10-1-7. Exceptions to experience and examination requirements [REVOKED]

~~(a) Any person meeting the education requirements to be licensed as a Licensed Social Worker or Licensed Social Work Associate as set forth under "675:10-1-2. REQUIREMENTS FOR LICENSED WORKER" and 675:10-1-3. REQUIREMENTS FOR LICENSED SOCIAL WORK ASSOCIATE" who applies to be licensed within ninety (90) days after October 1, 1980, shall be allowed to be licensed as a Licensed Social Worker or a Licensed Social Work Associate without being required to take the examination, provided the necessary fees are paid and appropriate documentation is presented as set forth by the Board. Applicants who apply within ninety (90) days after October 1, 1980, who meet the requirements as set forth in this section may also be excused from the requirement of two (2) years experience.~~

~~(b) Within ninety (90) days after October 1, 1980, any person who qualifies as a Licensed Social Worker or a Licensed Social Work Associate and is engaged in the practice of a specialty approved by the Board on October 1, 1980 shall be exempt from the requirement of two (2) years of supervised experience, provided appropriate documentation is submitted to validate the existence of such practice in an agency or facility which meets standards acceptable to the social work profession. Such documentation shall included the following:~~

~~(1) identifying information~~

~~(2) educational history~~

~~(3) work history~~
~~(4) location of agency or facility~~
~~(5) referral sources~~
~~(6) availability of supervision or consultation~~

675:10-1-8. Issuance of licens

The Board will issue an appropriate license to all applicants who meet the requirements for licensure in order to identify the social workers to the public as a ~~Licensed Social Worker or a Licensed Social Work Associate~~ LCSW, LMSW, LSW, LSW-Adm or LSWA.

675:10-1-9. Form of application

(a) Applicants for licensure as a LCSW, LMSW, LSW, LSW-Adm or LSWA ~~Licensed Social Worker or Licensed Social Work Associate~~ shall make such application on the most current form prescribed by the Board, shall submit the required fees and shall supply appropriate documentation as required by the Board to validate the facts which are claimed as a part of the licensing process. Such items to include but not be limited to:

(1) official transcript
(2) notarized photograph taken within the last 12 months
(3) record of work experience
(4) certification by employers as to the facts or an affidavit attesting to the facts by the applicant
(5) notarized signature
(6) ~~code of professional conduct~~ signed consent authorizing the Board to conduct a criminal background check
(7) verification of supervision

(b) The Board may conduct a criminal background check on all applicants. The fee shall be paid to the Board at the time application is made.

(c) The use of false or fraudulent information by an applicant may be grounds for denial of a license.

675:10-1-10. Examinations

~~(a) Examinations will be offered at least twice yearly on dates as specified by the Board. The fees for such examinations will be based upon the actual cost of the examination but shall not exceed $125.~~

~~(b) Upon receipt of a properly executed application for licensure, the Executive Secretary of the Oklahoma State Board of Licensed Social Workers shall notify the applicant of the date and place for the next examination.~~

(a) The Board accepts the following licensure examinations administered by the ASWB:

(1) Basic or Bachelors
(2) Intermediate or Master
(3) Advanced or Advanced Generalist
(4) Clinical

(b) Upon approval by the Board to take the examination and issuance of a provisional license, the applicant may apply through the ASWB to sit for the examination.

(c) In the event of failure to pass the examination, the applicant may retake the examination every ninety (90) days during the year the provisional license is valid.

675:10-1-11. Non-residence

Persons not residing in Oklahoma may apply for, ~~and~~ receive and renew a license provided they otherwise meet the requirements and submit appropriate documentation to the Board. However, their reasons for desiring licensure must be documented and the Board will assume no responsibility for their licensure ~~practice of social work~~ except when such practice occurs within the State of Oklahoma.

675:10-1-12. Fees [REVOKED]

~~(a) The initial fee for licensure shall be $75. The annual fee for licensure renewal shall be $50 for Licensed Social Worker (LSW) with specialty certification; $50 for Licensed Social Worker (LSW) with generic license; $50 for Licensed Social Work Associate (LSWA). All licenses shall expire at the end of each calendar year and shall be subject to renewal on the first day of the next calendar year.~~

~~(b) All licensees shall be notified ninety (90) days prior to the end of the calendar year, on an appropriate form, of the licensure renewal. A complete renewal package, including fee, must be postmarked by December 31 of the calendar year.~~

~~(c) Licenses will lapse on the last day of the calendar year. Such lapsed licenses shall be renewed upon payment of an additional $25, provided that the full fee, with penalty, is submitted within ninety (90) days from the first day of the new calendar year. Licensees that submit documentation for renewals postmarked after December 31 of the calendar year will be assessed the $25 late renewal fee.~~

~~(d) The fee for duplicate or replaced licenses shall be $10. A written request stating the reason for such duplicate or replaced license must be submitted to the Board.~~

~~(e) The fee for a replaced license with a new specialty added shall be the regular renewal fee (as stated in (a) of this section). In this event, the previous license shall be returned to the Board before issuance of the replacement license.~~

~~(f) The fee for a provisional license shall be $75. A $10 service fee will be assessed when the provisional license is surrendered for a regular license.~~

675:10-1-12.1. Renewal of licenses

(a) All licenses shall expire at the end of each calendar year and shall be subject to renewal on the first day of the next calendar year.

(b) All licensees must submit a complete renewal package, including fee, postmarked by December 31 of the calendar year. Only renewals submitted on the most current forms provided by the Board will be accepted.

(c) Licenses will lapse on the last day of the calendar year. Such lapsed licenses shall be renewed upon receipt of a complete renewal application and payment of the renewal fee plus a late fee as set forth in 675:1-1-9 if submitted within ninety (90) days from the first day of the new calendar year. Licensees that submit documentation for renewals postmarked after December 31 of the calendar year will be assessed the late renewal fee.

675:10-1-13. Lapsed licenses

(a) Licenses lapsed beyond the ninety (90) day period from the first day of the new calendar year will be treated as a new application after March 31 of each calendar year. A new application must be submitted with appropriate documentation as required by the ~~board~~ Board. All current requirements, including re-examination, must be met by the applicant.

~~(b) During the initial sixty (60) days after July 1, 1981 (House Bill 1387 of the 1982 Oklahoma Legislature) when reviewing applications from persons who have allowed their license to lapse, the Board will review their application as a new application which must meet the full requirements of the licensing law for licensure and for licensure in specialties. (This would include House Bill 1910 of the 1980 Oklahoma Legislature/"Social Worker's Licensing Act" and House Bill 1387 of the 1982 Oklahoma Legislature.)~~

(~~c~~b) Lapsed licenses must be surrendered to the Board.

~~(d) If the applicant for a new license under this section involves a specialty that was attached to the lapsed license, the following rules apply:~~

~~(1) any Clinical Social Work Practice specialty that was held with the lapsed license will be reinstated upon Board approval of the new application with submission of documentation of continuing education received during the twelve months immediately preceding the approval date of new license, as long as the licensee acquired the clinical specialty through passage of either the Level C examination or the Clinical examination. Those individuals who have allowed their license and Clinical Social Work Practice specialty to lapse, and have not successfully passed one of these examinations, will be required to do so before clinical specialty is added to the new license.~~

~~(2) any Social Work Administration or any Social Planning and Community Organization specialties that were held with the lapsed license will be reinstated upon Board approval of the new application with submission of documentation of continuing education received during the twelve months immediately preceding the approval date of the new license.~~

675:10-1-13.1. Addition of specialty to license [REVOKED]

~~Any person who currently holds a license as social worker may add a specialty to their license as follows:~~

~~(1) As of July 1, 1992, any person seeking to add the Clinical Social Work Practice specialty to their license must:~~

~~(A) initiate a contract for supervision as specified in the Guidelines for Supervision, if the person has not already acquired the needed experience and supervision,~~

~~(B) make a request in writing to the Board, if the person has acquired the needed experience and supervision,~~

~~(C) provide documentation of clinical practice and clinical supervision as required in the Guidelines for Supervision, and~~

~~(D) successfully pass the Clinical Examination required by the Board at the end of the supervision period.~~

~~(2) An exception to the provision for adding the Clinical Social Work Practice specialty would be any licensed social worker who has allowed the specialty to drop, and who acquired that specialty through passage of the Level C or the Clinical Examination offered through the American Association of State Social Work Boards, Inc./Assessment Systems, Inc.~~

~~(3) Any licensee seeking to add the Social Work Administration specialty or the Social Planning and Community Organization specialty must:~~

~~(A) initiate a contract for supervision as specified in the Guidelines for Supervision, if the person has not already acquired the needed experience and supervision,~~

~~(B) make a request in writing to the Board, if the person has acquired the needed experience and supervision, and~~

~~(C) provide documentation of the social work administration experience and supervision, or social planning and community organization experience and supervision, as specified in the Guidelines for Supervision.~~

675:10-1-14. Previous registration allowing licensure [REVOKED]

~~Within sixty (60) days after July 1, 1982, any person not meeting the requirements for licensure as provided in subsection A of Section 1261.1 of Title 59 of the Oklahoma Statutes (Social Worker's Licensing Act) shall, upon payment of the necessary fee and submission of documentation as required by the Board, be licensed under the following provisions:~~

~~(1) Previously registered.~~

~~(A) Any person registered on or before September 30, 1980, as a registered social work associate with the Board of Registration of Social Workers may be licensed as a licensed social work associate, provided that person is engaged in the practice of social work in an agency or facility approved by the Board and is under the supervision of a person licensed or eligible to be licensed as a licensed social worker at the time of his application for licensure.~~

~~(B) Any person registered on or before September 30, 1980, as a registered social worker with the Board of Registration of Social Workers may be licensed as a licensed social worker who is engaged in the practice of social work in an agency or facility approved by the Board at the time of his application for licensure.~~

~~(2) Current ACSW certification. Any person who is a member of the Academy of Certified Social Workers may be licensed as a Licensed Social Worker.~~

675:10-1-15. Reciprocity - Endorsement

(a) Any person who becomes a resident of Oklahoma ~~this state~~ and who is or has been, immediately preceding his residency in this state, licensed in good standing to practice social work by another state which grants a like privilege or reciprocity and who meets the educational and work experience qualifications for licensure in Oklahoma ~~this state~~ may, upon payment of the necessary fee and submission of documentation as required by the Board, be licensed under these provisions.

(b) Reciprocity - endorsement shall be based upon ~~written agreements between Oklahoma and other states. Such agreements are to be determined after~~ an evaluation of the licensing criteria of ~~those~~ the other ~~states~~ state to determine if criteria is equal to or more stringent than Oklahoma licensing requirements~~, and based upon granting of a like privilege between Oklahoma and other states~~.

675:10-1-16. Provisional license

~~Upon certification by the Executive Secretary, the Board shall authorize the issuance of temporary provisional licenses to persons who qualify as follows:~~

~~(1)~~ Persons who have met all qualifications for licensure under the provisions of ~~675:10-1-2 and 675:10-1-3 of~~ this Chapter, except passage of the required examination, ~~and must wait for passage of the next examination~~ shall, upon payment of the necessary fee and submission of documentation as required by the Board, be issued a provisional license as provided in 59 O.S., §1261.5. A provisional license may not be issued for longer than one year. ~~under the following provisions:~~

~~(A) upon receipt and recording of the person's examination score by the Board, the person's provisional license will automatically be revoked,~~

~~(B) such persons shall take the next license examination, and~~

~~(C) no person may be granted a provisional license more than once; and~~

~~(2) The Board has established a fee of $50 for a provisional license. A $5 service fee will be assessed when the provisional license is surrendered for a regular license. At the end of the period for which a provisional license is issued, the provisional license shall be surrendered to the Executive Secretary of the Board.~~

~~(3) In accordance with O.S. 59, Section 1261B (1) and (2), any applicant granted a provisional license may not be in private practice until:~~

~~(A) successfully passed Licensed Social Worker examination.~~

~~(B) met all other requirements for certification in the specialty for which they have applied.~~

675:10-1-16.1. Complaint procedure [REVOKED]

~~(a) **Receiving complaints.** The Board shall receive complaints against licensees through the mail or in person at the Board office. Only written complaints shall be accepted for consideration, unless extenuating circumstances exist. Upon receipt of the complaint, the Board Executive Secretary shall:~~

~~(1) stamp all pages with a Board stamp which indicates the date of receipt,~~

~~(2) review the complaint to determine if the person against whom the complaint is registered is a current licensee,~~

~~(3) log the complaint, assigning a number consisting of the year and sequence number in which it was received; further, recording the date received, name of complainant, and the name and license number of licensee,~~

~~(4) generate a letter to the complainant indicating receipt and review of the complaint by the Board officials,~~

~~(5) place the complaint in a pending file,~~

~~(6) notify the Board chair or chair's designee, a former or current Board member appointed by the Chair, and the Attorney General Liaison (hereinafter referred to as the "Complaint Committee") of receipt of a complaint.~~

~~(b) **Reviewing complaints.** Upon notification that a complaint has been received, the Complaint Committee shall review the contents to determine whether or not the allegation constitutes a possible violation of the Code of Professional Conduct. If the allegation does not indicate a possible violation of this code, the Complaint Committee shall instruct the Executive Secretary to generate a letter to the complainant thanking them for their concern and advising them that the complaint does not fall within the purview of the Board. If the allegation does indicate a possible violation of this code, the Complaint Committee shall make the following determination:~~

~~(1) The alleged violation appears to be one which would not, if found to be valid, result in a denial, revocation or suspension of a license, as specified in Section 675:10-1-17 of this Chapter, but one which does indicate the need for Board review and possible informal action.~~

~~(2) The alleged violation appears to be one which could, if found to be valid, result in a denial, revocation or suspension of a license, as specified in Section 675:10-1-17 of this Chapter.~~

~~(c) **Allegations, if substantiated, not appearing to result in a denial, revocation or suspension of a license.** If an alleged violation appears to be one which would not result in a denial, revocation or suspension of a license, the chair or chair's designee shall proceed with addressing the allegation by reviewing the complaint with the attorney general liaison for the Board. Upon the consent of the chair or chair's designee and the advice of the attorney general liaison, the chair or chair's *designee* shall proceed by:~~

~~(1) Notification of the licensee by certified mail that a complaint has been received, outlining the nature of the complaint.~~

~~(2) Forwarding to the licensee a copy of the informal process for addressing complaints, which requires:~~

~~(A) a prompt letter to the Board from the licensee responding to the merits of the complaint,~~

~~(B) an informal interview with the Board to fully explore the issues involved in the complaint,~~

~~(C) an agreement by the Board and the licensee on the merits of the complaint,~~

~~(D) a Consent Decree for disciplinary action for the licensee, approved by the Board and signed by the~~

~~licensee and the chair or chair's designee, which may include one or more of the following:~~

~~(i) a letter of education instructing the licensee to correct the aspect of practice in question;~~

~~(ii) a tutorial assigned to the licensee to remedy the practice in question, under the supervision of a Board Approved Supervisor assigned by the Board, with the wishes and needs of the licensee taken into consideration;~~

~~(iii) a letter of censure disciplining the licensee for the practice in question,~~

~~(E) a review of the Consent Decree with the complainant, with consideration given to any disagreement the complainant may have to the course of remedial action,~~

~~(F) a review of the course of action in a specified time, not longer than six months, to determine whether or not remediation has taken place,~~

~~(G) a letter to the licensee indicating that the informal process has ended.~~

~~(3) Referral to the formal investigation process when:~~

~~(A) the licensee fails to respond to the certified letter from the Board,~~

~~(B) the informal process reveals new or expanded allegations that indicate the possibility of a denial, revocation or suspension of a license,~~

~~(C) the licensee fails to meet the requirements of the educational letter or the tutorial without good cause.~~

~~(d) **Allegations, if substantiated, appearing to result in a denial, revocation or suspension of a license.** If an alleged violation appears to be one which would result in a denial, revocation or suspension of a license, the Complaint Committee shall proceed with addressing the complaint by the process detailed below based upon agreement of at least two members:~~

~~(1) Contacting an investigator designated by the Board as qualified to address the nature of the complaint. Preference will be given, if possible, to a Board Approved Supervisor,~~

~~(2) Providing the designated investigator with names and addresses of the complainant and the licensee,~~

~~(3) Issuing a letter of intent that specifies:~~

~~(A) the intended parameters of the investigation;~~

~~(B) the individuals to be interviewed;~~

~~(C) the contract fee and travel reimbursement, as allowed by statute;~~

~~(D) the time frame for completing the investigation.~~

~~(4) Indicating whether or not the licensee should be interviewed by the contract investigator, in reference to:~~

~~(A) advice by the attorney general liaison not to do so in order to reserve the interview with the licensee in a setting under oath;~~

~~(B) the possibility of a criminal investigation being conducted concurrently or subsequently to the Board investigation,~~

~~(5) Submitting the investigative report to the Complaint Committee for review and recommendation to the Board concerning proposed action to be taken concerning the complaint.~~

~~(6) Placing the complaint on the agenda for the next Board meeting for report on the status of the complaint and possible action by the Board. Possible actions by the Board would include:~~

~~(A) a dismissal of the complaint due to lack of evidence of a code violation;~~

~~(B) a referral to the informal process due to a finding that the results of the investigation reveal code violations, but not ones that would result in the need for denial, revocation or suspension;~~

~~(C) a decision to hold a hearing as provided for in Section 675:10-1-17 of this Chapter.~~

675:10-1-17. Procedures for denials, revocations, suspensions [REVOKED]

~~(a) **When a hearing is required.** The Board shall hold a hearing when it considers that there is cause to deny, revoke or suspend any license (or specialty certification) issued by the Board or applied for in accordance with the Social Worker's Licensing Act or otherwise to discipline a Licensed Social Worker or Licensed Social Work Associate. The hearing will determine whether or not the person:~~

~~(1) Has been convicted of a felony and, after investigation the Board finds that he or she has not been sufficiently rehabilitated to meet the public trust;~~

~~(2) Has been found guilty of fraud or deceit in connection with services rendered or in establishing needed qualifications under this act;~~

~~(3) Has knowingly aided or abetted a person, not licensed under these provisions, in representing himself or herself as licensed in this state;~~

~~(4) Has been found guilty of unprofessional conduct as defined by rules established by the Board;~~

~~(5) Has been found guilty of negligence or wrongful actions in the performance of his or her duties;~~

~~(6) Is unable to function because of addiction to alcohol, drugs or other chemicals;~~

~~(7) Is unable to function because of physical or mental illness; or~~

~~(8) Has not properly performed because of illegal disclosure of confidential information without proper authority.~~

~~(b) **Hearing procedures to be followed.**~~

~~(1) **Notice.**~~

~~(A) All parties shall be afforded an opportunity for hearing after reasonable notice. Notice shall be by registered mail sent more than ten days prior to a hearing.~~

~~(B) The notice shall include:~~

~~(i) a statement of the time, place, and nature of the hearing;~~

~~(ii) a statement of the legal authority and jurisdiction under which the hearing is to be held;~~

~~(iii) a reference to the particular sections of the statutes and rules involved;~~

~~(iv) a short and plain statement of the matters asserted. If the Board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.~~

~~(C) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.~~

~~(D) Informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order or default.~~

~~(E) The record in an individual proceeding shall include:~~

~~(i) all pleadings, motions and intermediate rulings;~~

~~(ii) evidence received or considered;~~

~~(iii) a statement of matters officially noticed;~~

~~(iv) questions and offers of proof, objections, and rulings thereon;~~

~~(v) proposed findings and exceptions;~~

~~(vi) any decision, opinion, or report by the officer presiding at the hearing;~~

~~(vii) all staff memoranda or data submitted to the members of the Board in connection with their consideration of the case.~~

~~(F) Oral proceedings or any part thereof shall be transcribed on request of any party.~~

~~(G) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.~~

~~(2) **Probative effect.**~~

~~(A) The Board may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. It shall give effect to the rules of privilege recognized by law in respect to: self incrimination; confidential communications between husband and wife during the subsistence of the marriage relation; communication between attorney and client; made in that relation; confessions made to a clergyman or priest in his professional capacity in the course of discipline enjoined by the church to which he belongs; communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by such practitioner through a physical examination of a patient made in a professional capacity; records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States are made confidential and privileged. No greater exclusionary effect shall be given any such rule or privilege than would obtain in an action in court. The Board may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;~~

~~(B) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;~~

~~(C) A party may conduct cross examinations required for a full and true disclosure of the facts;~~

~~(D) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.~~

~~(E) Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he represents.~~

~~(3) **Final order.**~~

~~(A) A final order adverse to a party in an individual proceeding shall be in writing or stated in the record. A final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with Board rules, a party submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any order. Upon request, a copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record.~~

~~(B) The Board shall preside at the hearing and a majority vote is necessary to approve a final order.~~

~~(4) **Board communication.** Unless required for the disposition of ex parte matters authorized by law, members of the Board assigned to render a decision or to make findings of fact and conclusions of law in an individual proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. A Board member (1) may communicate with other members of the Board, and (2) may have the aid and advice of one or more personal assistants.~~

~~(5) **Application for license.**~~

~~(A) When a licensee has made timely and sufficient application for renewal of a license or a new license~~

~~with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the Board, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.~~

~~(B) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of Board proceedings, the Board gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the Board finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.~~

~~(6) **Proceeding materials.**~~

~~(A) The Board conducting any proceeding subject to this Act (Administrative Procedures Act) shall have power to require the furnishing of such information, the attendance of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for the purposes of the proceeding. The Board, or any party to a proceeding before it, may take the depositions of witnesses, within or without the State, in the same manner as is provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible. Provided, however, all or any part of the deposition may be objected to at time of hearing, and may be received in evidence or excluded from the evidence by the Board or individual conducting the hearing in accordance with the law with reference to evidence in courts of record under the law of the State of Oklahoma.~~

~~(B) In furtherance of the powers granted by subsection (1) hereof, any Board, or any duly authorized member thereof, upon its own motion may, and upon the request of any party appearing in an individual proceeding shall, issue subpoenas for witnesses, or subpoenas duces tecum to compel the production of books, records, papers or other objects, which may be served by any person in any manner prescribed for the service of a subpoena in a civil action.~~

~~(C) In case of disobedience to any subpoena issued and served under this Section or to any lawful Board requirement for information, or of the refusal of any **person to testify** to any matter regarding which he may be interrogated lawfully in a proceeding before a Board, the Board may apply to the district court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith the court or the judge shall cite the respondent to appear and shall hear the matter as expeditiously as possible. If thedisobedience or refusal is found to be unlawful, the court, or the jury, shall center an order requiring compliance. Disobedience of such an order shall be punished as contempt of court in the same manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.~~

~~(7) **Withdrawal from proceedings.** A member shall withdraw from any proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a Board member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, by the remaining members thereof, if a quorum. Upon the disqualification of a member of the Board, the Governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding.~~

~~(8) **Rehearing.** A decision in an individual proceeding shall be subject to rehearing, reopening or reconsideration by the Board within ten (10) days from the date of its entry. The grounds for such action shall be either:~~

~~(A) newly discovered or newly available evidence, relevant to the issues;~~

~~(B) need for additional evidence adequately to develop the facts essential to proper decision;~~

~~(C) probable error committed by the Board in the proceeding or in its decision such as would be ground for reversal on judicial review of the order;~~

~~(D) need for further consideration of the issues and the evidence in the public interest; or~~

~~(E) a showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The order of the Board granting rehearing, reconsideration or review, or the petition of a party therefor, shall set forth the grounds which justify such action. Nothing in this Section shall prevent rehearing, reopening or reconsideration of a matter on the grounds of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. The hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.~~

~~(9) **Filing suit.** Any person aggrieved by the suspension, denial, or revocation of his license or specialty certification may file suit within thirty (30) days after receiving the Board's order of denial, revocation or suspension in a court of competent jurisdiction to have his license~~

~~or specialty certification reinstated or approved. If the court finds that the proceedings before the Board were conducted in a manner to protect the rights of the accused, that the proceedings were held in a manner to insure correct determination of fact, and that the Board's order is consistent with the intent of this law, the court shall affirm the Board's order. If not, the court may order the person's license or specialty certification reinstated or approved or a rehearing before the Board.~~

~~(10)~~ ~~**Stay enforcement.**~~

~~(A) The filing of a proceeding for review shall not stay enforcement of the Board ecision; but the Board may do so, or the reviewing court may order a stay upon such terms as it deems proper.~~

~~(B) In every proceeding in any court for the review of an order by a Board, upon the filing of an application, supported by verified statements of material fact establishing that the enforcement of the order pending final decision would result in present, continuous and irreparable impairment of the constitutional rights of the applicant, a stay of the enforcement of such order and of the accrual of penalties thereunder shall be entered upon the condition that:~~

~~(i) injury to adverse parties or to the public, as the case may be, can be obviated through the furnishing of security adequate to compensate for any loss which may be suffered as a result of the stay in the event the order is affirmed, in whole or in part;~~

~~(ii) a supersedeas bond, in the amount and with sureties prescribed and approved by the reviewing court, in its sound judicial discretion, as adequate to meet requirement (a) be filed with such court. If an application for supersedeas hereunder, accompanied by a proposal for a supersedeas bond, is not acted upon by the court within forty-five (45) days from the filing thereof, the court appealed from thereupon shall be automatically superseded and stayed, during the pendency of the appeal, upon the filing of the bond proposed in the application, provided, however, that the court thereafter may reasonably modify the terms of the supersedeas as to amount and surety whereupon the appellant shall comply with such modification in order to maintain the supersedeas in effect.~~

~~(11)~~ ~~**Certified copy of record.**~~ ~~Within thirty (30) days after service of the petition for review or equivalent process upon it, or within such further time as the reviewing court, upon application for good cause shown, may allow, the Board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs resulting therefrom. The court may require or permit subsequent corrections or additions to the record when deemed desirable.~~

~~(12)~~ ~~**Review.**~~ ~~The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Board, not shown in the record, testimony thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.~~

~~(13)~~ ~~**Order set aside, modified or reversed.**~~

~~(A) In any proceeding for the review of a Board order, the District Court, in the exercise of proper judicial discretion or authority, may set aside or modify the order, or reverse it and remand it to the Board for further proceedings, if it determines that the substantial rights of the appellant or petitioner for review have been prejudiced because the Board findings, inferences, conclusions or decisions, are:~~

~~(i) in violation of constitutional provisions; or~~

~~(ii) in excess of the statutory authority or jurisdiction of the agency; or,~~

~~(iii) made upon unlawful procedure; or~~

~~(iv) affected by other error of law; or~~

~~(v) clearly erroneous in view of the reliable, material, probative and substantial competent evidence, including matters properly noticed by the Board upon examination and consideration of the entire record as submitted; but without otherwise substituting its judgment as to the weight of the evidence for that of the Board on question of fact; or~~

~~(vi) arbitrary or capricious; or~~

~~(vii) because findings of fact, upon issues essential to the decision were not made although requested.~~

~~(B) The reviewing court, also in the exercise of proper judicial discretion or authority, may remand the case to the Board for the taking and consideration of further evidence, if it is deemed essential to a proper disposition of the issue.~~

~~(C) The reviewing court shall affirm the order and decision of the Board, if it is found to be valid and the proceedings are free from prejudicial error to the appellant.~~

~~(14)~~ ~~**Review of final judgment.**~~ ~~An aggrieved party, or the Board, without any motion for a new trial, may secure a review of any final judgment of a district court by appeal to the Supreme Court. Such appeal shall be taken in the manner and time provided by law for appeal to the Supreme Court from the district court in civil actions. A Board taking an appeal shall not be required to give bond.~~

[OAR Docket #04-857; filed 5-7-04]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 12. GUIDELINES FOR SUPERVISION

[OAR Docket #04-858]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
675:12-1-2. Supervision and the Licensed Social Work Associate [AMENDED]
675:12-1-3. Supervision and the Licensed Social Worker [REVOKED]
675:12-1-4. Supervision and specialty certification [AMENDED]
675:12-1-5. Supervision and specific licensure [REVOKED]
675:12-1-6. Minimum supervision expectations [AMENDED]
675:12-1-7. Requirements for Board Approved Supervisor [REVOKED]
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675:12-1-3.1. Supervision and the Licensed Clinical Social Worker [NEW]
675:12-1-3.2. Supervision and the Licensed Clinical Social Worker - Adm [NEW]
675:12-1-4. Supervision and specialty certification [AMENDED]
675:12-1-5. Supervision and specific licensure [REVOKED]
675:12-1-6. Minimum supervision expectations [AMENDED]
675:12-1-7. Requirements for Board Approved Supervisor [AMENDED]
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n/a
ANALYSIS:
This Chapter deals with supervision required for licensure. he rules were amended to comply with changes in the law that became effective November 1, 2003.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #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 JULY 1, 2004:

675:12-1-2. Supervision ~~and the Licensed Social Work Associate~~

(a) **Licensed clinical social worker.** The two year supervised experience requirement for licensure as a LCSW must be under the supervision of a social worker holding the LCSW license. ~~The two year supervised experience requirement for licensure as a Licensed Social Work Associate must be under the supervision of a social worker holding the Licensed Social Worker license. The two year supervised experience requirement does not allow the Licensed Social Work Associate applicant to be supervised by another Licensed Social Work Associate.~~

(b) **Licensed master social worker.** No supervision is required for the LMSW.

(c) **Licensed social worker.** The two year supervised experience requirement for licensure as a LSW must be under the supervision of a social worker holding the LSW-Adm or LCSW license.

(d) **Licensed social worker with a specialty of administration.** The two year supervised experience requirement for licensure as a LSW-Adm must be under the supervision of a social worker holding the LSW-Adm license.

(e) **Licensed social worker associate.** The two year supervised experience requirement for licensure as a Licensed Social Work Associate must be under the supervision of a social worker holding the LSW-Adm or LCSW license.

675:12-1-3. Supervision and the Licensed Social Worker [REVOKED]

~~The two year supervised experience requirement for licensure as a Licensed Social Worker must be under the supervision of a social worker holding the Licensed Social Worker license.~~

675:12-1-4. Supervision and ~~specialty certification~~ private or independent practice

~~(a) Specialty certification or engaging~~ Engaging in the private or independent practice of social work requires holding of the ~~Licensed Social Worker~~ LCSW or LSW-Adm license and at least two years of supervised experience certified by the Board ~~in the method to be offered in private practice~~. The supervisor must hold the appropriate ~~specialty certification~~ license title and be a Board Approved Supervisor ~~if supervision is contracted for external to the agency~~. ~~If supervision is contracted for or provided by an approved arrangement within the agency the supervisor need hold only appropriate specialty certification.~~

~~(b) Experience requirements for the specialties recognized by the Board allow for supervision to be provided by other licensed mental health professionals as defined in Title 43A of the Oklahoma Statutes should social work supervision be unavailable within the community~~.

675:12-1-5. Supervision and specific licensure [REVOKED]

~~(a) Simultaneous supervision. The use of "other professionals" is not allowed when receiving simultaneous supervision for licensure.~~

~~(b) LSW generic licensure supervision. Supervision received to fulfill requirements for LSW generic licensure must be provided by a Licensed Social Worker.~~

~~(c) Specialty certification only supervision. When the supervisee possesses a LSW generic license, supervision must be under a Licensed Social Worker with a specialty certification in the area specialty certification is sought. If this supervision is shown to be unavailable, supervision may be provided by other licensed mental health professionals as defined in Title 43A of the Oklahoma Statutes.~~

~~(d) Simultaneous LSW generic license and specialty certification supervision. Supervision received for simultaneous LSW generic and specialty certification licensure must be under a Licensed Social Worker with a specialty certification in the area specialty certification is sought. Supervision from a Board Approved Supervisor may be contracted from outside the agency should internal supervision be unavailable.~~

675:12-1-6. ~~Minimum supervision expectations~~ Board Approved Supervisors

(a) ~~All Board Approved Supervisors will be registered with the Oklahoma State Board of Licensed Social Workers by having their names on file.~~ **Requirements.** The two year experience requirement for specialty certification contracted external to the agency must be under the supervision of a Board Approved Supervisor. A Board approved social worker with one of the specialty certifications presently recognized by the Board does not automatically qualify as a Board Approved Supervisor. The knowledge, experience, and skill base of a Board Approved Supervisor exceeds the minimum requirements for specialty certification. Applicants for a Board Approved Supervisor shall:

(1) Submit an application on the most current forms provided by the Board.

(2) Be a Licensed Social Worker with the title licensure in the same method as supervisor status is sought.

(3) Have at least five (5) years of full time work experience (or equivalent) beyond the master's degree in social work. Three of these five years must be full time work experience (or equivalent) in the specialty that supervisory status is sought.

(4) Have at least two years of supervisory work experience following completion of the master's degree in social work.

(5) Have two (2) letters of reference submitted to the Oklahoma State Board of Licensed Social Workers. At least one letter shall be from a licensed social worker holding the same licensure title. Documentation of such participation will be furnished the Board and will be updated periodically as required by the Board.

(b) **Approved supervisor status.** Board approved supervisor status remains in effect contingent upon maintaining a current license in good standing and completing additional supervisor training, sponsored or approved by the Board, at least every three years.

(~~b~~c) **Minimum supervision expectations.**

(1) A supervisee must receive an average of one hour per week of face-to-face Supervision for two years (minimum of 100 hours). Group supervision is acceptable if such supervision does not exceed at least one-fourth of the total supervisory time per evaluation period. Group supervision is defined as educational supervision conducted with more than one supervisee by an LSW with appropriate certification in the specialty sought by supervisees, or a Board Approved Supervisor with appropriate certification in specialty sought by supervisees. The group should be limited in size to no more than 4 supervisees.

(~~c~~2) A contract will be negotiated by supervisor and supervisee and a copy furnished to the Oklahoma State Board of Licensed Social Workers prior to beginning ~~within 30 days of the beginning of~~ supervision. Any supervision completed prior to approval of the supervision contract will not be accepted. An official transcript with degree posted and current job description must accompany the contract. Such a contract shall not be valid if the supervisor and supervisee have a relationship that could affect the employment or benefits of the supervisor, and that relationship could, in any way, bias or compromise the supervisor's evaluation of the supervisee. Should the contract be terminated before completion of the minimum number of hours required, the supervisee is responsible for negotiating a new contract and obtaining all evaluation and termination forms required to document prior supervision. The supervisee shall notify the Board within 30 days of any job change and submit a new job description.

(~~d~~3) There will be a periodic written evaluation:

(~~1~~A) no less than 6 months and ~~(~~a total of 25 hours of supervision~~)~~

(~~2~~B) no less than 12 months and ~~(~~a total of 50 hours of supervision~~)~~

(~~3~~C) no less than 24 month and ~~(~~a total of 100 hours of supervision~~)~~

(~~e~~4) A copy of the written evaluation will be provided by the supervisee ~~and~~ to the Board office.

(~~f~~5) If supervision is terminated by either party, the ~~supervisor~~ supervisee is responsible for notifying the Board and completing a termination form which the Board will provide. Such termination form must be received by the Oklahoma State Board of Licensed Social Workers within 14 days of the termination.

(~~g~~6) If there is any question regarding the supervisee's competency, the supervisor is free to ask for a sample of supervisee's work.

(~~h~~7) It is ~~recommended~~ required that all supervisors for licensure participate in ~~an Orientation on~~ supervision training sponsored or approved by the Board ~~within one year of availability~~. Board Approved Supervisors are required to participate in the ~~Orientation~~ training. Documentation of such participation will be furnished the Oklahoma State Board of Licensed Social Workers and will be updated periodically as required by the Board.

(~~i~~8) When the proposed supervisor is not a staff member of the supervisee's agency, social work ethics demand

that the proposed supervisor insure that the agency administration (or its representative) is in accord with the arrangements for supervision by a qualified LSW supervisor. This is essential whether these arrangements are made by the agency or the supervisee and regardless of whether the agency contributes to financial compensation of the supervisor. The supervisor is responsible for securing agreement from the agency administration as to the purpose and content of the desired supervision and the supervisor's specific role responsibilities and limitations. The supervisor is also responsible for learning agency functions and policies so that any supervisory suggestions are constructive and realistic within agency purposes and resources.

(9) Supervision from a Board Approved Supervisor may be contracted from outside the agency should internal supervision be unavailable.

(~~j~~10) All supervisors will adhere to the guidelines on supervision required by the Oklahoma State Board of Licensed Social Workers.

675:12-1-7. Requirements for Board Approved Supervisor [REVOKED]

~~(a) The two year experience requirement for specialty certification contracted external to the agency must be under the supervision of a Board Approved Supervisor. A Board approved social worker with one of the specialty certifications presently recognized by the Board does not automatically qualify as a Board Approved Supervisor. The knowledge, experience, and skill base of a Board Approved Supervisor exceeds the minimum requirements for specialty certification. A Board Approved Supervisor is expected to meet the following qualifications:~~

~~(1) Be a Licensed Social Worker with specialty certification in the same method as supervisor status is sought.~~

~~(2) Have at least five (5) years of full time work experience (or equivalent) beyond the master's/doctoral degree in social work. Three of these five years must be full time work experience (or equivalent) in the specialty that supervisory status is sought.~~

~~(3) Have at least two years of supervisory work experience following completion of the master's/doctoral degree in social work.~~

~~(4) Have two (2) letters of reference submitted to the Oklahoma State Board of Licensed Social Workers. Documentation of such participation will be furnished the Board and will be updated periodically as required by the Board.~~

[OAR Docket #04-858; filed 5-7-04]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 15. GUIDELINES FOR CONTINUING EDUCATION

[OAR Docket #04-859]

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RULES:
675:15-1-2. Introduction [AMENDED]
675:15-1-3. Continuing education standards [AMENDED]
675:15-1-4. Content of continuing education learning activities [AMENDED]
675:15-1-5. Information to providers of continuing education [AMENDED]
675:15-1-6. Suggested criteria for accepting category I and II continuing education events [REVOKED]
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675:15-1-2. Introduction [AMENDED]
675:15-1-2.1. Audit of continuing education [NEW]
675:15-1-3. Continuing education standards [AMENDED]
675:15-1-4. Content of continuing education learning activities [AMENDED]
675:15-1-5. Information to providers of continuing education [AMENDED]
675:15-1-6. Suggested criteria for accepting category I and II continuing education events [REVOKED]
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ANALYSIS:
This Chapter sets forth the requirements and guidelines for continuing education providers and approval of continuing education programs. Amendments to were made to comply with changes in the Social Workers Licensing Act that become effective November 1, 2003.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #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 JULY 1, 2004:

675:15-1-2. Introduction

~~(a) Historically, the practice of continuing education in social work has demonstrated rather sporadic activity. However, with the advent of recent licensing laws continuing education activities have been increasing. Within the profession of social work the National Association of Social Workers and the Council on Social Work Education have been chiefly responsible for proliferating the professions commitment to continuing education. Anchoring the commitment to continuing education the National Association of Social Workers Board of Directors approved a set of operating standards in June of 1982. Essentially, the Association noted, "Belief in the Client's right to have knowledgeable and skillful assistance provides the basis for the social worker's participation in continuing education. A commitment to continuing education also is grounded in NASW's Code of Ethics: "The social worker should strive to become and remain proficient in professional practice and the performance of professional functions"; and "The social worker should take responsibility for identifying, developing and fully utilizing knowledge for professional practice." Continuing education further provides the social worker with the opportunity to acquire new and necessary information; demonstrate a conscious self-directed and continuous effort toward personal and professional development; strengthen qualifications for professional licensure, certification or registration; meet changing career demands; and explore new careers in social work."~~

~~(b) Given the profession's commitment to continuing education it is commendable that Oklahoma joins two other states (Colorado and Kansas) in mandating continuing education as a requirement for ongoing licensure in Social Work. In Oklahoma, the Oklahoma State Board of Licensed Social Workers is responsible for monitoring continuing education for the profession.~~The Oklahoma State Board of Licensed Social Workers will recognize all continuing education activities provided by the Association of Social Work Boards (ASWB-ACE), National Association of Social Workers (NASW-CE), and those state and local providers who have been approved by the Oklahoma State Board of Licensed Social Workers.

675:15-1-3. Continuing education standards

(a) **Continuing education hours.** The ~~number of hours specified for each social work license specialty (i.e. clinical social work practice, social work administration and social planning and community organization) is 12 clock hours of verified continuing education per specialty per licensing period. After January 1, 2000, the~~ number of hours specified for each social work license title ~~specialty (i.e. clinical social work practice, social work administration, social planning and community organization)~~ is 16 clock hours of verified continuing education per specialty per licensing period. At least 3 hours per ~~licensee~~ license title must be categorized as ethics training as defined by the Board. As specified in the Oklahoma Social Worker's Licensing Act, the license must be renewed every twelve months.

(b) **Categorical learning activities.** It shall be the responsibility of the individual social worker to choose his/her own continuing education program. The continuing education experience may be organized into three main categories. ~~Six hours of the continuing education requirement must fall within the parameters of Category I learning experiences. After January 1, 2000, eight~~ Eight hours of the continuing education requirement must fall within the parameters of Category I learning experiences.

(1) **Category I - Formally Organized Learning Events.** ~~As noted in the NASW standards for continuing professional education each one of the learning categories is explicated in the following manner.~~ Category I includes formally organized learning events, involving face to face interaction with a teacher for the purpose of accomplishing specific learning objectives. Examples include courses, workshops, practice oriented seminars, and training offered by accredited programs of social work education, and live, interactive, video conferencing by an approved program. ~~A LSW may submit an Application for Prior Approval Category I and II Continuing Education Events or an Application for Retroactive Approval Category I and II Continuing Education Events to the Oklahoma State Board of Licensed Social Workers for review either before or after attending an event. The request will be reviewed by the Board at their next meeting following receipt of the request. When approval of the request is granted, information will be given concerning documentation of the approval at renewal time. If an event has been previously approved by the Oklahoma State Board of Licensed Social Workers at the request of a sponsoring organization or another Licensed Social Worker, only a Verification of Attendance form must be submitted to document attendance at the event. In this case, the~~ The Verification of Attendance form should be retained by the ~~LSW~~ licensee and submitted to the Board on request ~~at renewal time~~.

(2) **Category II - Professional Meetings.** Category II includes professional meetings on the national, state and local levels. Events in this category involve formally structured discussions among professionals about professional issues, whereby participants increase their awareness of new developments in social work and related fields. Documentation of Category II is the same as described for Category I in (1) of this subsection.

(3) **Category III - Individual Professional Activities.** Category III consists of a variety of self-directed professional study activities and growth experiences. Examples include writing papers and books for presentation or publication; making presentations on major professional issues or programs; teaching or training assignments, engaging in research, correspondence work, televised courses, audio/visual videotapes and other forms of self-study upon approval by the Board, shown to update or enhance competence in social work practice. Social workers/teachers whose primary job responsibilities include designing new

courses will be allowed to receive continuing education credit hours. Specifically, when a social worker/teacher engages in the initial preparation of a course he/she will be awarded continuing education hours commensurate to the number of semester hours of the course. If a quarter system is utilized, credit for quarter hours will be allowed utilizing the ratio of 3 quarter hours to 2 semester hours. Inherent in the nature of Category III experiences is the expectation that an individual will spend a greater number of clock hours in a self-directed activity than he/she will receive actual continuing education credit. Verification of Category III activities can be achieved by receiving prior or retroactive approval of the proposed self-directed activity and evidence of the completed project to the Board utilizing the Application for Prior Approval Category III Individual Professional Activities or the Application for Retroactive Approval Category III Individual Professional Activities.

~~(c) **Individual social worker responsibilities.** It shall be the responsibility of the individual social worker to receive prior approval for his/her continuing education activities from the Oklahoma State Board of Licensed Social Workers. There are three exceptions to the "prior approval" rule:~~

~~(1) When the Oklahoma State Board of Licensed Social Workers approves an activity for a continuing education provider and the provider designates on their brochure that prior approval has been received.~~

~~(2) In Category II learning events the social worker may receive retroactive approval by submitting an Application for Retroactive Approval Category I and II Continuing Education Events, Verification of Attendance form and a brochure describing the event indicating his/her participating at a professional social work meeting. The meeting must have been sponsored by a social work organization.~~

~~(3) A Licensed Social Worker may elect to apply "at his/her own risk" for retroactive approval of continuing education events. However, the Board only encourages this practice when there has been insufficient time for the social worker to obtain prior approval.~~

675:15-1-4. Content of continuing education learning activities

(a) In ascertaining appropriate areas of learning content in Category I, II and III events, the following methods are substantive topical organizers for continuing education activities.

(1) **Direct methods.**

(A) Individual Counseling
(B) Psychotherapy
(C) Family Treatment
(D) Group Work
(E) Community Organization (Social Action, Social Planning and Social Development)
(F) Specialized Services and Treatment

(2) **Indirect methods.**

(A) Administration and Management
(B) Supervision
(C) Consultation
(D) Social Planning
(E) Policy Development
(F) Teaching and Educational Methods
(G) Research
(H) Social Problems
(I) Advocacy
(J) Specialized Services

(b) Specific content areas as they relate to license ~~specialties~~ titles would include:

(1) ~~Clinical social work practice specialty.~~ **Licensed Clinical Social Worker.** Development of specific value, knowledge and skills in the following areas: human development, psychodynamics, human relations, personality development, crisis intervention, psychopathology, group dynamics, family dynamics, interactive effect of biological functioning on the client system, interactive effect of psychosocial functioning on the client system, assessing client system dysfunctioning, assessing personality functioning/dysfunctioning, appropriate selection of intervention strategies and techniques, integration of theory and practice skills, appropriate timing and use of termination, use of evaluation, use of supervision, capacity to engage in self-regulated clinical practice and understanding and commitment to the Code of Professional Conduct.

(2) ~~Social work administration.~~ **Licensed Social Worker-Adm.** Development of specific value, knowledge and skills in the following areas: organizational theory, policy development, program management, personnel management, fiscal management, public relations, program planning, program evaluation, delegation, communication (verbal and nonverbal), directing activities, decision making, appropriate use of consultation, ~~use of supervision to enhance professional growth and functioning and commitment to the Code of Professional Conduct.~~

~~(3) **Social planning and community organization.** Development of specific value, knowledge and skills in the following areas:~~ assisting the community group to articulate needs and problems, helping community residents develop the organizational capacity necessary for effective social action, establishing positive and productive relationships with leadership people at a variety of levels, understanding and support of social welfare programs, understanding of community dynamics and power structure, bringing together disparate citizen groups and social agencies in a working relationship, translating community concerns into remedial action, increasing motivation and participation of community residents in problem solving activities, negotiating with citizens groups and community agencies, effecting change in intergroup relationships, use of supervision to enhance professional growth in functioning and commitment to the Code of Professional Conduct.

675:15-1-5. Information to providers of continuing education

(a) ~~The Oklahoma State Board of Licensed Social Workers will offer to schools, institutions and organizations in Oklahoma the opportunity to submit for approval programs in continuing education for social workers. All programs should be~~

~~formally organized learning events, involving face-to-face interaction with a teacher for the express purpose of accomplishing specific learning objectives.~~ When planning a continuing education activity (face-to-face or distance education) for social workers, the provider needs to consider six essential program elements. The guidelines that follow delineate those elements and establish respective professional expectations of providers. The licensed social worker, in turn, can use these guidelines as the basis for inquiry about a provider's qualifications, leading to better decisions about which offerings to pursue.

(1) **Program development.** Adequate and responsive continuing education program development requires interaction among sponsoring administrators, the instructor or educational leader, and potential social work consumers. The provider needs to involve social workers in the identification of learning needs, in the selection and development of educational events to meet those needs, and in the establishment of appropriate evaluation mechanisms. Involvement of social workers with content expertise and an understanding of the educational objectives are recommended as well.

(2) **Program content.** Continuing education events for social workers should clearly relate to social work practice, theory, and methodology; to the level of social work education; to social policy; or to administration, planning, and research related to human services. As a guide for participation, learning objectives and content designed to meet those objectives should be specified for each event. The way in which the content will meet the learning needs of social workers also should be made clear. Such information should be provided on promotional materials or upon request.

(3) **Participants.** Selection of participants for continuing education events must not discriminate by reason of gender, age, race, ethnic background, sexual orientation, physical abilities, or other characteristics. Promotional materials should state clearly the educational level of the social worker for whom the event is geared but not limited to, as well as any prerequisites.

(4) **Program format and instructional methodology.** The provider should be able to demonstrate that the format and methods selected for continuing education were influenced by contemporary adult learning theory; the identified learning needs of the participants; and the learning objectives, the educational content, and the size and composition of the participant group. Methodologies need to be diverse and encourage the active participation of the learner in the educational process. A variety of teaching techniques should be considered; any assignments, such as readings or structured exercises, should be related to the conceptual content, and any audio-visual resources should be used in a planned manner.

(5) **Qualified instruction.** The sponsor of a continuing education event must make sure that the instructor, speaker, or educational leader is qualified. Individual providers have responsibility for offering only those events for which they are qualified. Specific qualifications include:

(A) competence in the subject matter as determined by a combination of two of the following:

(i) license, registration or certificate in an area related to the course subject matter;

(ii) master's or higher degree in an area related to the course subject matter;

(iii) training, certification or teaching experience in subject matter related to the course subject matter;

(iv) at least two years' experience in an area related to the course subject matter.

(B) ability to transmit the educational content to the participants' understanding of continuing education objectives

(C) knowledge and skill in instructional methodology, learning processes, and the use of emotionally laden material

(D) capacity for self-evaluation and modification of future offerings in response to evaluations conducted by self, sponsor, and participants

(E) maintenance of an appropriate certification, credential, or license for subject matter.

(6) Program evaluation. Formal evaluation of each continuing education event is essential for maintaining or improving the qualify and effectiveness of future events. Measures of evaluation need to be established during the planning phase and linked directly with the event's learning objectives. Two distinct but related measures of evaluation may be appropriate. The first is the instructor's, sponsor's, and participants' assessment of the event with respect to content, format, methodology, instruction, and facilities. The second is assessment of the knowledge acquired by participants and is based on:

(A) demonstration of a taught skill

(B) an oral or written test

(C) a project or report

(D) a self-assessment checklist

(E) another instrument designed to collect data on changes in participant knowledge or performance attributed to the educational experience. The instructor and sponsor together should review the evaluation outcome and revise subsequent events accordingly.

(b) The form to verify continuing education activity must contain the following information:

(1) Program name or title

(2) Instructor(s) or Presenter(s)

(3) Date

(4) Number of clock hours of program

~~(b) The procedure for submitting a program is as follows:~~

~~(1) Request. Submit a request to the office of the Oklahoma State Board of Licensed Social Workers. On your request indicate the scope of the program for which you seek approval. Also provide the following information:~~

~~(A) Program name~~

~~(B) Educational objective of the program~~

~~(C) Program format/instructional methodology~~

~~(D) Instructor(s) (attach curriculum vitae)~~
~~(E) Method of program evaluation~~
~~(F) Number of clock hours of program.~~
~~(2) **Fee schedule.** Along with your request, submit a check to cover the cost of processing as follows (a program may be defined as workshops, seminars, institutes, etc.):~~
~~(1) $35 - 1 program~~
~~(2) $50 - 2-4 programs~~
~~(3) $75 - 5-8 programs~~
~~(4) $100 - 9 or more programs~~

(c) The Oklahoma State Board of Licensed Social Workers recognizes the Association of Social Work Boards (ASWB-ACE), National Association of Social Workers (NASW-CE) and will offer other continuing education providers the opportunity to become approved providers in continuing education for social workers. All providers shall submit the most current application form(s) provided by the Board along with the fee as set forth in 675:1-1-9. The Board may audit approved providers at any time.

(d) Upon notice of approval of your continuing education provider status you may designate this status on your brochure along with the provider number issued by the Board. ~~activity you will be allowed to designate on your brochure that your program has received prior approval from the Oklahoma State Board of Licensed Social Workers. The designation shall indicate that professional social workers will be allowed to utilize your activity to meet their mandated continuing education requirements.~~

(e) A licensee may request approval of a program or event by submitting the most current application form(s) provided by the Board along with the fee as set forth in 675:1-1-9. Approval will be restricted to the individual licensee making application.

675:15-1-6. Suggested criteria for accepting category I and II continuing education events [REVOKED]

~~(a) Objectives of the learning activity and/or professional meeting must demonstrate a linkage to the broader context of social work practice in Oklahoma. Specifically, educational content should be linked to the Content of Continuing Education Learning Activities as adopted by the Oklahoma State Board of Licensed Social Workers.~~

~~(b) The program format and instructional methodology implored for the continuing education event must demonstrate a reasonable probability of translating program objectives into action. Specifically, the resources of time, money, facilities and personnel should have received consideration in program planning.~~

~~(c) The instructor(s) of the continuing education activity must demonstrate sufficient academic preparation and work related experience in the activity they will lead.~~

~~(d) There must be an adequate plan submitted that specifically states how the effectiveness of a continuing education activity will be gauged.~~

[OAR Docket #04-859; filed 5-7-04]

TITLE 720. STATE TEXTBOOK COMMITTEE
CHAPTER 10. TEXTBOOK SELECTION

[OAR Docket #04-788]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Definitions
720:10-1-2. [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. Bidding Procedures, Ancillary and supplementary items [AMENDED]
720:10-3-7. Free Materials [AMENDED]
AUTHORITY:
Article XIII, section 6 of the Oklahoma Constitution and 70 O.S. - § 16-118; State Textbook Committee
DATES:
Comment period:
May 16, 2003 through June 16, 2003
Public hearing:
June16, 2003
Adoption:
February 13, 2004
Submitted to Governor:
February 23, 2004
Submitted to House:
February 23, 2004
Submitted to Senate:
February 23, 2004
Gubernatorial approval:
April 1, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2004.
Final adoption:
April 15, 2004
Effective:
June 11, 2004
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
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.
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 11, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

720:10-1-2. Definitions

"Adopted materials" Adopted materials refers to materials approved by the State Textbook Committee and purchased with state funds.

"Ancillary material" Ancillary items considered for adoption shall be compatible with the textbook bid. This term refers to materials intended and designed to be used with a comprehensive program submitted by the same publisher. Examples of this type of material may include but are not limited to workbooks, quizzes, puzzles, test banks, transparencies, black line masters, etc.

"Comprehensive material or comprehensive program" ~~These terms refer to instructional materials or programs intended and designed to guide the instruction of a significant portion of the curriculum standards for the subject area the material has been submitted for adoption.~~ This term refers to teacher instructional material not intended to be used by students and shall include *Priority Academic Student Skills(PASS)* correlations. Additionally, this also includes one edition of the initial student instructional material such as a student text (electronic or print).

"Core subject cycle" This term refers to the period of time for which contracts are entered into for subjects identified by the State Textbook Committee. The cycle begins when contracts go into effect for the items bid in a subject area, and the cycle ends when the contracts expire and new contracts are ~~entered into~~ established for materials in the same subject area. The State Textbook Committee operates under a six-year adoption cycle for all subjects except Instructional Technology, which operates under a three-year adoption cycle.

"Free materials" Materials in any medium which a publisher intends to make available without cost upon the purchase of textbooks bid and adopted.

"Supplementary item or supplementary material" These terms refer to items intended and designated to guide the instruction of one or a few of the curriculum standards for the subject area for which the item has been submitted ~~for adoption~~. Supplementary materials are designed to be used independently or cooperatively with bid items submitted in the same subject area by the same or different publisher. Examples of supplementary items may include but are not limited to maps, atlases, flash cards, classroom libraries, stories about significant people in the subject area, selected readings, literature guides, or small books teaching about one component of a subject area~~, etc~~.

~~**"Teacher edition"** This term refers to material used for instruction that are not designed or intended to be used by students. Other terms used to describe teacher editions include teacher guide, instructor manuals, teacher resource kits, etc.~~

SUBCHAPTER 3. BIDDING PROCEDURES

720:10-3-1. Letters of intent to bid.

Letters of intent to bid from publishers must state the book or series of books the publishing company intends to bid in the appropriate subject area and grade level. Additions to the letter of intent will be accepted only until the deadline for the receipt of ~~letters of intent~~ publishers' bids and only if submitted in writing.

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

(a) One copy of each textbook and one sample of each learning package, kit ~~or system~~ comprehensive materials shall be filed with the office of the Secretary of the state Textbook Committee on or before the date specified in the schedule for the textbook adoption process. Textbooks must be in final form.

(b) One copy of each textbook and one sample of each learning package, kit~~or system~~ comprehensive material and materials not listed as free shall be provided to each member of the State Textbook Committee and to each Congressional District Review Center. ~~Every effort should be made to deliver these samples by August 10.~~ Failure to deliver samples by ~~August 10~~ the date established by the State Textbook Committee calendar ~~may~~ will result in a ~~bid being rejected~~ bid rejection.

(c) Samples of textbooks provided to the State Textbook Committee members and their advisors may be returned to the publishers, donated to a school district or donated to a college or university. Under no circumstances shall the samples become the personal property of the ~~C~~committee member or the advisor. Under no circumstances shall the samples be sold or donated for resale purposes.

(d) In order for a library or university to be designated by the State Textbook Committee as a Congressional District Review Center the library or university must agree to the following conditions:

(1) conveniently display materials immediately upon the receipt of materials and maintain the display until such date adopted by the State Textbook Committee; ~~the contracts for the adopted materials have expired. The curriculum materials held by the centers are intended to be a resource for students studying to become certified educators, and for educators teaching school in the surrounding areas;~~

(2) obtain approval of the State Textbook Committee before disposing or distributing the materials to any other person or entity; and remove materials from public access once they are adopted. Materials may remain accessible for on-site use to a limited audience (education professionals and pre-service teachers);

(3) ~~return materials to those publishers who express a desire to have their materials returned. When materials are shipped to the Congressional Review Centers, Publishers must notify the Congressional Review Centers of the arrangements that have been made for the materials to be returned, ensuring that no cost will be incurred by the Congressional District Review Center. These materials must remain on display until August 1 of the year in which the contract for these materials becomes effective.~~ sample materials may be returned to the publisher or may be disposed of with the approval of the State Textbook Committee~~.~~

~~(e) Where learning packages, kits, or systems are submitted for bids, only one complete system must be furnished to the Secretary of the State Textbook Committee. Preview packages~~

~~of those systems can be furnished to each remaining member of the State Textbook Committee and all Congressional District Review Centers. Each preview package must contain a sample of each instructional component so that the substantive instructional information of the program can be reviewed. Each preview package must be accompanied by a prospectus including:~~

~~(1) information about authors of the materials;~~

~~(2) the educational purposed for which the system is intended;~~

~~(3) evaluation criteria and procedures built into the system;~~

~~(4) detailed content of each component including pictorial or graphic examples.~~

(~~f~~e) Highly-visible, permanent labels stating, "sample not to be sold" must be attached to ~~all bid~~ each item~~s~~ ~~and teacher editions~~ furnished as a sample~~s~~ to the State Textbook Committee, Congressional Review Centers and the office of the Secretary of the State Textbook Committee, ~~(total of 22 sets). Labels shall be attached to each item on the front, bottom right hand corner. However, if the materials submitted for bid are packaged in a manner that clearly identifies the title, publishing company, grade level, subject category, and classification of the materials, then labels are not required. Labels should not be attached to wrappings or covers that must be removed to review the materials. Information on the label must include:~~

~~(1) title;~~

~~(2) publishing company;~~

~~(3) grade level;~~

~~(4) subject category;~~

~~(5) classification (i.e., average, low level, accelerated).~~

(f) Consumable materials must be clearly marked as consumable.

(g) Each publisher must warrant that all books adopted shall comply with the standards in the Manufacturing standards and Specifications for Textbooks approved by the National Advisory Commission on Textbook Standards.

(h) The State Textbook Committee favors regular editions, but special editions may be considered provided the differences between the two (2) editions are set forth with the bid.

(i) Multimedia and related materials will be considered for adoption.

(j) Teacher ~~editions~~ materials will be adopted as separate items only at the kindergarten level and ESL.

(k) Instructional Materials shall be adopted in no more than one (1) core subject cycle.

(l) A hardbound copy and a softbound copy of the same text are considered to be the same book and when bid together fill one (1) position.

(m) A book which has been bid and rejected by the State Textbook Committee cannot be bid again for the subject contract ~~period~~ cycle unless allowed by law.

(n) Instructional computer software, including, but not limited to applications using computer assisted instruction, interactive videodisc, other computer courseware, and magnetic media, shall include comprehensive teacher ~~edition~~ materials listing special requirements for the respective subject or course along with~~:~~

(1) instructions on how to use the instructional computer software;

(2) an inventory of the components of the instructional computer software system;

(3) specifications for the hardware necessary to operate the system;

(4) technical support via at least a 15-hour toll-free telephone line.

(o) Specifications for the hardware necessary to operate the instructional computer software system must be identified. If the hardware and equipment essential for review of the materials bid in any category is not available, it shall be supplied to the State Textbook Committee, Congressional District Review Centers, and the State Department of Education for the duration of the review process.

720:10-3-6. Ancillary and supplementary items

~~(a) Ancillary items considered for adoption must be compatible with the textbook bid.~~

~~(b) Each textbook adopted may have~~ Any ancillary items or supplementary items listed with textbooks in the annual requisition ~~Ancillary and supplementary materials~~ must be approved by the State Textbook Committee unless designated as free. If ancillary or supplementary materials are not available at the time of the initial adoption, but subsequently become available, publishers may submit the ancillary and supplementary materials out of cycle ~~adoption of textbooks~~. When the Call for Bids is mailed each year, publishers can submit letters of intent to present ancillary and supplementary materials. Samples must be sent to all members of the State Textbook Committee, to the regional review centers and to the office of the Secretary of the State Textbook Committee. The ancillary and supplementary item(s) will be considered for adoption at the regular adoption meeting. The adopted ancillary and supplementary item(s) will be listed in the next annual requisition.

720:10-3-7. Free Materials

~~(a) Materials in any medium which a publisher intends to make available without cost upon the purchase of textbooks bid and adopted must be listed on the Free Materials Form of the Bid.~~

(a) Free materials must be listed on the Free Materials Form of the Bid and additionally labeled , "Free Material not reviewed or approved by the State Textbook Committee".

(b) All materials in any medium which a publisher intends to make available without cost for use with textbooks, as noted on bid forms. Free Material will not be ~~must be~~ submitted to the State Textbook Committee for consideration ~~before the substitution meeting~~ for adoption purposes. Samples of any items listed on the Free Materials Form shall be listed at the same time and in the same manner as the textbooks which they accompany. Materials listed as give ~~away~~ free items must not be from another bid area. Materials listed as ~~give away~~ free items must be for the duration of the contract period. ~~Publishers are encouraged to furnish review copies of give away items as soon as possible after they become available. Provisional adoption of a textbook is possible if significant items to be~~

~~given away are not available for review before the annual adoption meeting.~~

(c) All items that are not listed on the bid form as given free cannot be provided free. Doing so may jeopardize the textbook contract. ~~All give-away items must be identified on the Free Materials Form. No give away items will be added to the Free Materials Form after the deadline for receipt of bids.~~

(d) ~~Teacher editions~~ Comprehensive teacher materials will be furnished free to schools districts based upon a minimum ratio of one (1) teacher ~~edition~~ set to 20 textbooks purchased by the district and will be submitted with bids for review.

(e) ~~Any item bid and also listed for give-away will not be considered for adoption.~~

[OAR Docket #04-788; filed 4-30-04]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 45. PUBLIC TRANSPORTATION PROJECT DEVELOPMENT ASSISTANCE

[OAR Docket #04-838]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
730:45-1-2 [AMENDED]
AUTHORITY:
Oklahoma Transportation Commission; 200 N. E. 21st Street, Oklahoma City, Oklahoma 73105; 69 O.S. §§ 4002 AND 4005
DATES:
Comment period:
December 1, 2003 to December 31, 2003
Public hearing:
None requested
Adoption:
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Submitted to Governor:
January 21, 2004
Submitted to House:
January 21, 2004
Submitted to Senate:
January 21, 2004
Gubernatorial approval:
February 25, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on March 24, 2004.
Final adoption:
March 24, 2004
Effective:
June 11, 2004
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
This permanent rule will streamline the distribution of federal funds for two public transit grants, as appropriated in the Code of Federal Regulations, Section 5307 by specifying Lawton Transit Trust and the University of Oklahoma as direct grant recipients of funds they are currently receiving through the Department of Transportation.

Public Transportation Project Development Assistance (OAR 730:45-1-2) provides the authority necessary to administer federal funding assistance to public transit programs in Oklahoma for areas under 200,000 population. These rules are promulgated in accordance with the provisions of 69 O.S. §§ 4002 and 4005.

CONTACT PERSON:
Michael E. Mayberry, Assistant Director-Administration, ODOT, 200 N.E. 21st Street, Room 3A-2, Oklahoma City, OK 73105, 405-522-6000

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 11, 2004:

730:45-1-2. Authority

These policies are promulgated in accordance with the provisions of 69 O.S. §§ 4002 and 4005. The Department is the Governor's designee to apply for, receive and administer ~~all~~ federal ~~and state~~ public transportation financial assistance programs. These federal programs shall include, but not limited to, capital grants, metropolitan and state planning funds, and urbanized and non-urbanized formula grants for areas ~~under~~fewer than 200,000 population~~, including but not limited to Federal Transit Administration funding under Public Law 105-178,~~. The Governor's delegation of authority shall not apply to the federal apportionments under the Urbanized Area Formula Program for the cities of Lawton and Norman, Oklahoma. The designee for these annual appropriations shall be the Lawton Transit Trust and the University of Oklahoma, respectively. With these exceptions only, this designation shall include all Federal funding provided by the Transportation Equity Act for the 21st Century (TEA-21) and ~~the Public Transit Revolving Fund under O.S. 69 § 4031, et seq.~~any Federal legislation supplementing or supplanting TEA21. The Department is also responsible for the administration of the funds appropriated to the State's Public Transit Revolving Fund.

[OAR Docket #04-838; filed 5-3-04]

TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS
CHAPTER 10. LICENSURE OF VETERINARIANS, VETERINARY TECHNICIANS AND ANIMAL EUTHANASIA TECHNICIANS

[OAR Docket #04-844]

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ANALYSIS:
The proposed chapter 10 revisions include a fee increase for renewal of a veterinary license and an increase for renewal of a registration for veterinary technicians.
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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, 2004:

SUBCHAPTER 3. LICENSURE OF VETERINARIANS

775:10-3-12. Fees

(a) **Fee Schedule.**

(1) **Examination.** The following fees shall be assessed for licensure and examination of veterinarians:

(A) North American Veterinary Licensing Examination - Cost + $185.00

(B) Oklahoma State Examination - $150.00

(2) **Licensure.** The following fees shall be assessed for licensure of veterinarians:

(A) Annual renewal (prior to June 30) - ~~$125.00~~ $175.00

(B) Annual renewal Faculty License (prior to June 30) - ~~$100.00~~ $175.00

(C) Reactivation fee (between July 1 and August 29) - ~~$150.00~~ $275.00

(D) Reinstatement fee (after August 30) - $625.00

(E) Licensure by Endorsement - $625.00

(F) Faculty License - $125.00

(3) **Duplication or modification of license.** A fee of $50.00 shall be assessed for duplication or modification of a veterinary license.

(4) **Supervised Doctor of Veterinary Medicine.** The following fees shall be assessed for certification as a supervised doctor of veterinary medicine:

(A) Original Certificate - $125.00

(B) Extension - $100.00

(C) Transfer - $50.00

(5) **Miscellaneous fees.** The following miscellaneous fees shall be assessed by the Board.

(A) Certification of scores - $40.00

(B) Verification of license - $20.00

(C) Duplication of proof of renewal of license - $10.00

(D) Certification of public records (per page) - $1.00

(E) Duplication of public records (per page) - $.25

(F) Transcript of public records recorded (per page) - Cost

(G) Issuance of subpoena - $.25

(H) Returned check processing fee - $35.00

(I) Probation fees:

(i) $50.00/month, unless otherwise modified by the Board or the Secretary/Treasurer

(ii) Investigation/Prosecution -actual cost incurred (Non-payment of investigation, prosecution or probation costs or fees within 30 days of billing may be grounds for imposition of additional sanctions by the Board).

(J) Declaratory ruling - $300.00 plus court costs.

(6) **Registered Veterinary technician fees.** The following registered veterinary technician fees shall be assessed by the Board:

(A) National Veterinary Technician Examination - At cost

(B) State Examination - $60.00

(C) Application Processing Fee - $50.00

(D) Certificate - $20.00

(E) Annual Renewal - ~~$40.00~~ $45.00

(7) **Animal Euthanasia technician fees.** The following animal euthanasia technician fees shall be assessed by the Board:

(A) Training and Practical Examination - At cost

(B) Oklahoma State Bureau of Investigation criminal history search - At cost

(C) State Written Examination - $60.00

(D) Application Processing Fee - $50.00

(E) Certificate - $20.00

(F) Annual Renewal - $40.00

(G) Reactivation fee - $25.00

(b) **Submission of fees.** All fees are non-refundable.

[OAR Docket #04-844; filed 5-4-04]

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

[OAR Docket #04-855]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Antidegradation Requirements
785:45-3-2. Applications of antidegradation policy [AMENDED]

Subchapter 5. Surface Water Quality Standards
Part 3. Beneficial Uses and Criteria to Protect Uses
785:45-5-9. General narrative criteria [NEW]
785:45-5-13. Agriculture: livestock and irrigation [AMENDED]
785:45-5-16. Primary Body Contact Recreation [AMENDED]
785:45-5-17. Secondary Body Contact Recreation [AMENDED]
785:45-5-19. Aesthetics [AMENDED]
Appendix A. Designated Beneficial Uses for Surface Waters [REVOKED]
Appendix A. Designated Beneficial Uses for Surface Waters [NEW]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [REVOKED]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [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]
Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]
Appendix G. Numerical Criteria to Protect Beneficial Uses [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.

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n/a

ANALYSIS:

The Oklahoma Water Resources Board ("OWRB") has adopted amendments to various provisions of the Oklahoma Water Quality Standards ("OWQS") as follows:

Thermal discharges. OAC 785:45-3-2 has been amended to delete language relating to thermal discharges. Existing language in OAC 785:45-5-12(f)(2) adequately protects water quality from thermal discharges. The amendment is needed because the language in 785:45-3-2(e) has become unnecessary and is potentially counterproductive. The intended effect of this amendment is to delete the unnecessary language in 785:45-3-2(e) and leave the language in 785:45-5-12(f)(2) standing alone to address thermal discharges.

General narrative criteria. A new Section has been added at OAC 785:45-5-9 which will provide in one Section the various narrative criteria moved from numerous other Sections in OAC 785:45. The statements of narrative criteria for: *minerals* currently in 785:45-5-13(e), *nutrients* currently in 785:45-5-19(c)(2)(A), *solids* currently in 785:45-5-19(c)(3), and *taste and odor* currently in 785:45-5-19(c)(4), will all be deleted and relocated to the new Section 785:45-5-9. These changes were needed because these narrative criteria are to be applied for protection of multiple beneficial uses; however, because these criteria are currently located in Sections dealing with "Agriculture" (785:45-5-13) and "Aesthetics" (785:45-5-19), some persons have wondered whether the criteria apply for purposes of only those respective beneficial uses. The intended effect of the amendments is to make it clear that these narrative criteria are to be applied across the spectrum of all beneficial uses.

Bacteria testing. OAC 785:45-5-16 has been amended to add language to address the presence of concurrent testing datasets for multiple indicators of bacteria. This amendment is needed because an unintended and incorrect interpretation may be made that a discharger may choose to test for all three of the listed indicators (coliform, E. coli, and enterococci) and then report only the result that passed rather than a result that failed. The intended effect of this amendment is to make clear that no exceedances are allowed for any indicator group.

Use designations for identified waterbodies. Appendix A, Designated Beneficial Uses for Surface Waters, has been revoked and reenacted with numerous changes. The first category of changes includes new or additional use designations for several streams which include Boley Creek in Okfuskee County (changing the current Warm Water Aquatic Community, Primary Body Contact Recreation, Agriculture, Aesthetics, and Industrial and Municipal Process and Cooling Water designations to Habitat Limited Aquatic Community, Secondary Body Contact Recreation, and Aesthetics); an unnamed tributary of Caddo Creek in Carter County (changing the current Warm Water Aquatic Community and Primary Body Contact Recreation designations to Habitat Limited Aquatic Community and Secondary Body Contact Recreation, respectively, and deleting the current designations of Industrial and Municipal Process and Cooling Water and Agriculture); an unnamed tributary of Garrison Creek in Sequoyah County (changing the current designations of Warm Water Aquatic Community and Primary Body Contact Recreation to Habitat Limited Aquatic Community and Secondary Body Contact Recreation, respectively, and deleting the current designations of Industrial and Municipal Process and Cooling Water and Agriculture); Garrison Creek in Sequoyah County (deleting the current designation of Industrial and Municipal Process and Cooling Water, and affirming the current designations of Warm Water Aquatic Community, Primary Body Contact Recreation, Agriculture and Aesthetics); an unnamed tributary of Mayhew Creek in Choctaw County (changing the current designations of Warm Water Aquatic Community and Primary Body Contact Recreation to Habitat Limited Aquatic Community and Secondary Body Contact Recreation, respectively, and deleting the current designations of Industrial and Municipal Process and Cooling Water and Agriculture); and Snake Creek in Mayes County (changing the current Warm Water Aquatic Community, Agriculture, Aesthetics, and Industrial and Municipal Process and Cooling Water designations to Cool Water Aquaic Community, Primary Body Contact Recreation and Aesthetics, and adding the designation of High Quality Waters). The circumstances which created the need for these changes are that Use Attainability Analyses ("UAAs") have been completed for these streams. The UAA for each stream indicated that certain uses should be designated for that stream. In some cases the UAA indicated that limitations for additional protection should be designated for a stream. The intended effect of these amendments is to designate the particular uses and limitations indicated by the UAAs as required by U.S. Environmental Protection Agency ("EPA") regulations under the federal Clean Water Act. A second category of changes is to add approximately twenty-three (23) streams which do not receive effluent from point source discharges, and designate their uses. These amendments are needed because these streams, which are located in various ecoregions around the state, were recently subjected to biological collections and physical assessments. These collections and assessments have demonstrated the following: all of these streams should have the designated uses of Primary Body Contact Recreation and Aesthetics; approximately one-half of the streams should have the Warm Water Aquatic Community designation and the other half should have the Cool Water Aquatic Community designation; three of the streams should have the Public and Private Water Supply designation; and two of the streams should have the Agriculture designation. The intended effect of these amendments is to satisfy the federal Clean Water Act by assigning appropriate uses for protection of these waters of the state.

HQW designation for Tenkiller Lake. Another change in Appendix A adds the limitation of "HQW" (denoting High Quality Waters) for the Upper Illinois River from Tenkiller Dam, including Tenkiller Reservoir upstream to Barren Fork confluence. This revision was suggested by the Department of Environmental Quality ("DEQ"). This amendment was needed because the portions of the Illinois River above this segment are designated for additional protection as Outstanding Resource Waters and a Scenic River, while the portion of the Illinois River below this segment is designated for additional protection as High Quality Waters. However, the segment of the Illinois River upstream from Tenkiller Dam to the confluence with Barren Fork Creek currently is not designated for any such additional protection. The intended effect of this amendment is to add protection for this segment of the Illinois River as High Quality Waters as provided in OAC 785:45-5-25.

Correction for East Fork/West Fork Creek. Appendix B, Areas with Waters of Recreational and/or Ecological Significance, has been revoked and reenacted with changes in the description of East Fork and West Fork Creek

in Table 2. These amendments are needed because this description contains errors which should be corrected. The intended effect of these amendments is to correct the errors by identifying the correct county (McCurtain), changing the language "north-northwest" to "north-northeast", and adding a Section, Township and Range legal description.

Site-specific criteria for Heavener/OK Foods. Appendix E, Requirements for Development of Site Specific Criteria for Metals, has been revoked and reenacted to add new site specific criteria for copper relating to the City of Heavener and OK Foods, Inc. discharge to Morris Creek. These amendments are needed because 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.

Corrections to Appendix G. Appendix G, Numerical Criteria to Protect Beneficial Uses, has been revoked and reenacted with certain corrections. These amendments are needed because the provisions for "butylbenzyl" should be corrected to reflect the parameter name of "butylbenzyl phthalate" and to add the Chemical Abstract Society number for this parameter. In addition, the term "lindane", a commercial name, should be replaced with the more generic name "gamma BHC". The intended effect of these amendments is to correct and improve the descriptions for these parameters.

Language and citation corrections. Several provisions throughout OAC 785:45 have been amended to correct grammatical and other errors and to update citations. These amendments are needed because several rules contain grammatical and other errors. Additionally, citations have evolved and need to be updated wherever they are referenced. The intended effect of these amendments is to make the rules reflect the appropriate grammar and citations and otherwise to state their text accurately.

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.

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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, 2004:

SUBCHAPTER 3. ANTIDEGRADATION REQUIREMENTS

785:45-3-2. Applications of antidegradation policy

(a) **Application to outstanding resource waters (ORW).** Certain waters of the state constitute an outstanding resource or have exceptional recreational and/or ecological significance. These waters include streams designated "Scenic River" or "ORW" in Appendix A of this Chapter, and waters of the State located within watersheds of Scenic Rivers. Additionally, these may include waters located within National and State parks, forests, wilderness areas, wildlife management areas, and wildlife refuges, and waters which contain species listed pursuant to the federal Endangered Species Act as described in 785:45-5-25(c)(2)(A) and 785:46-13-6(c). No degradation of water quality shall be allowed in these waters.

(b) **Application to high quality waters (HQW).** It is recognized that certain waters of the state possess existing water quality which exceeds those levels necessary to support propagation of fishes, shellfishes, wildlife, and recreation in and on the water. These high quality waters shall be maintained and protected.

(c) **Application to beneficial uses.** No water quality degradation which will interfere with the attainment or maintenance of an existing or designated beneficial use shall be allowed.

(d) **Application to improved waters.** As the quality of any waters of the state improve, no degradation of such improved waters shall be allowed.

~~(e) **Application to thermal discharge.** In cases where potential water quality impairment associated with a thermal discharge is involved, the anti-degradation policy and implementation method shall be consistent with Section 316 of Public Law 92-500 as amended.~~

SUBCHAPTER 5. SURFACE WATER QUALITY STANDARDS

PART 3. BENEFICIAL USES AND CRITERIA TO PROTECT USES

785:45-5-9. General narrative criteria

(a) **Minerals.** Increased mineralization from elements such as, but not limited to, calcium, magnesium, sodium and their associated anions shall not impair any beneficial use. Derivations of certain historic concentrations can be found in Appendix F of this Chapter.

(b) **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.

(c) **Taste and Odor.** Taste and odor producing substances from other than natural origin shall 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 impair any beneficial use.

(d) **Nutrients.** Nutrients from point source discharges of other sources shall not cause excessive growth of periphyton, phytoplankton, or aquatic macrophyte communities which impairs any existing or designated beneficial use.

785:45-5-13. Agriculture: livestock and irrigation

(a) The surface waters of the State shall be maintained so that toxicity does not inhibit continued ingestion by livestock or irrigation of crops.

(b) Highly saline water should be used with best management practices as outlined in "Diagnosis and Reclamation of Saline Soils," United States Department of Agriculture Handbook No. 60 (1958).

(c) Guidelines for suitability of water quality for livestock and irrigation purposes are provided in Appendix C of this Chapter.

(d) For chlorides, sulfates and total dissolved solids at 180°C (see Standard Methods), the arithmetic mean of the concentration of the samples taken for a year in a particular segment shall not exceed the historical "yearly mean standard" determined from the table in Appendix F of this Chapter. For permitting purposes, the long term average concentration shall not exceed the yearly mean standard. Yearly mean standards shall be implemented by the permitting authority using long term average flows and complete mixing of effluent and receiving water. Furthermore, not more than one (1) in twenty (20) samples randomly collected at a site shall exceed the historical value of the "sample standard" calculated for that segment. For permitting purposes, the short term average concentration shall not exceed the sample standard. Sample standards shall be implemented by the permitting authority using short term average flows and complete mixing of effluent and receiving water.

(e) ~~Increased mineralization from other elements such as calcium, magnesium, sodium and their associated anions shall be maintained at or below a level that will not restrict any beneficial use.~~

~~(f)~~ The data from sampling stations in each segment are averaged, and the mean chloride, sulfate, and total dissolved solids at 180°C are presented in Appendix F of this Chapter. Segment averages shall be used unless more appropriate data are available.

(~~g~~f) The table in Appendix F of this Chapter contains statistical values from historical water quality data of mineral constituents. In cases where mineral content varies within a segment, the most pertinent data available should be used.

(~~h~~g) For permitting purposes, long term average mineral constituent concentrations to protect the Agricultural beneficial use shall not be required to be less than 700 mg/L for TDS, and 250 mg/L for chlorides and sulfates. These criteria shall be applied in the mixing zone.

785:45-5-16. Primary Body Contact Recreation

(a) Primary Body Contact Recreation involves direct body contact with the water where a possibility of ingestion exists. In these cases the water shall not contain chemical, physical or biological substances in concentrations that are irritating to skin or sense organs or are toxic or cause illness upon ingestion by human beings.

(b) In waters designated for Primary Body Contact Recreation the following limits for bacteria set forth in (c) of this section shall apply only during the recreation period of May 1 to September 30. The criteria for Secondary Body Contact Recreation will apply during the remainder of the year.

(c) Compliance with 785:45-5-16 shall be based upon meeting the requirements of one of the three (3) options specified below for bacteria. Upon selection of one (1) group or test method, said method shall be used exclusively over that thirty (30) day period. Provided, where concurrent data exist for multiple bacterial indicators on the same waterbody or waterbody segment, no criteria exceedances shall be allowed for any indicator group.

(1) Coliform Bacteria: The bacteria of the fecal coliform group shall not exceed a monthly geometric mean of 200/100 ml, as determined by multiple-tube fermentation or membrane filter procedures based on a minimum of not less than five (5) samples collected over a period of not more than thirty (30) days. Further, in no more than 10% of the total samples during any thirty (30) day period shall the bacteria of the fecal coliform group exceed 400/100 ml.

(2) Escherichia coli (E. coli): E. coli shall not exceed a monthly geometric mean of 126/100 ml based upon a minimum of not less than five (5) samples collected over a period of not more than thirty (30) days. No sample shall exceed a 75% one-sided confidence level of 235/100 ml in lakes and high use waterbodies and the 90% one-sided confidence level of 406/100 ml in all other Primary Body Contact Recreation beneficial use areas. These values are based upon all collected samples. Analysis procedures shall follow EPA-600/4-85/076, "Test Methods for Escherichia coli and Enterococci in Water by the Membrane Filter Procedure."

(3) Enterococci: Enterococci shall not exceed a monthly geometric mean of 33/100 ml based upon a minimum of not less than five (5) samples collected over a period of not more than thirty (30) days. No sample shall exceed a 75% one-sided confidence level of 61/100 ml in lakes and high use waterbodies and the 90% one-sided confidence level of 108/100 ml in all other Primary Body Contact Recreation beneficial use areas. These values are based upon all collected samples. Analysis procedures shall follow EPA-600/4-85/076, "Test Methods for Escherichia coli and Enterococci in Water by the Membrane Filter Procedure."

785:45-5-17. Secondary Body Contact Recreation

(a) The water quality requirements for Secondary Body Contact Recreation are usually not as stringent as for Primary Body Contact Recreation.

(b) The Secondary Body Contact Recreation beneficial use is designated where ingestion of water is not anticipated.

(c) Associated activities may include boating, fishing or wading.

(d) Waters so designated shall be maintained to be free from human pathogens in numbers which may produce adverse health ~~effect~~ effects in humans.

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~~ are 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**~~**; 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. Such criterion became effective July 1, 2002 and shall be implemented 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.~~

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		•	HQW	
Caney Creek	121700	PPWS	CWAC	•			PBCR		•		
Negro Jake Creek	121700		CWAC				PBCR		•		
Park Hill Branch	121700		WWAC	•		•	PBCR		•		
Barren Fork from mouth upstream to Hwy. 59	121700	PPWS	CWAC	1			PBCR		•	ORW	Scenic River
North Mining Camp Creek	121700		CWAC				PBCR		•		
Tyner Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	
Dennison 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
Peacheater Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	
Scraper Hollow	121700	PPWS	CWAC	•			PBCR		•	ORW	
England Hollow	121700	PPWS	CWAC	•			PBCR		•	ORW	
Green Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	
Shell Branch	121700	PPWS	CWAC	•			PBCR		•	ORW	
East Peavine Creek	121700		CWAC				PBCR		•		
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
Luna Creek	121700		CWAC				PBCR		•		
Tahlequah Creek	121700	PPWS	CWAC	•			PBCR		•	ORW	
Steely Hollow Creek	121700		CWAC				PBCR		•		
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		•		
Coody 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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		•		
Spring Creek	121600	PPWS	CWAC	•		•	PBCR		•	HQW	
Snake Creek	121600		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		•		
Little Horse Creek	121600		WWAC				PBCR		•		
Spavinaw Creek below Spavinaw Lake dam	121600	PPWS	CWAC	1			PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		•		
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		•		
Bull 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		•	HQW	
Elm Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Whitewater Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Cave Springs Branch	121600	PPWS	CWAC	•			PBCR		•	HQW	
Elk River	121600	PPWS	CWAC	1		•	PBCR		•		
Hollow Creek	121600	PPWS	CWAC	•		•	PBCR		•		
Sycamore Creek	121600	PPWS	CWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		•	HQW	
Devil's Hollow	121600	PPWS	CWAC	•		•	PBCR		•		
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 Wagoner)	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		•		
Inola Creek	121500		WWAC	•		•	PBCR		•		
Pea Creek	121500		WWAC	•		•	PBCR		•		
Adams Creek	121500	PPWS	WWAC	•		•	PBCR		•		
Salt Creek	121500		WWAC	•		•	SBCR		•		
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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		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		•		
Bird Creek	121300	PPWS	WWAC	1		•	PBCR		•		
Mingo Creek	121300	EWS	WWAC	•		•	PBCR		•		
Unnamed tributary of Mingo Creek	121300	EWS	HLAC	•		•	SBCR		•		
Elm Creek	121300		WWAC				PBCR		•		
Owasso Creek	121300		HLAC	•		•	SBCR		•		
Tributary of Owasso Creek at SE1/4, Sec. 31, T21N, R14E, IM	121300		HLAC	•		•	SBCR		•		
Ranch Creek	121300		WWAC				PBCR		•		
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	

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Candy Creek	121300	PPWS	WWAC	•		•	PBCR		•		
Pecan Hollow Creek	121300	PPWS	WWAC	•		•	PBCR		•	HQW	
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		•		
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		•		
Hogshooter Creek	121400		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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Verdigris River from and including Oolagah 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		•		
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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		•	HQW	HQW
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		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		•		NLW
Riddle Creek	220100		HLAC	•		•	SBCR		•		
Tributary of Riddle Creek at SE 1/4 Sec. 4, T07N, R26E, IM	220100		HLAC	•		•	SBCR		•		
Sugarloaf Creek	220100	PPWS	WWAC	1		•	PBCR		•		
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		•		
Red Oak Creek	220100		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		•		
Garrison Creek	220100		WWAC	•			PBCR		•		
Unnamed tributary at sect.18, T11N, R27E, IM	220100		HLAC				SBCR		•		
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	

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Beaver Creek	220200	EWS	WWAC	•		•	PBCR		•		
Sallisaw Creek downstream from U.S. Hwy. 64	220200	PPWS	CWAC	1		•	PBCR		•		
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		•	HQW	
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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
McAlester Lake and Watershed	220600	PPWS	WWAC	1		•	PBCR		•	SWS	
Deer Creek	220600		WWAC	•		•	PBCR		•		
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		•		
Big Creek	220600		WWAC	•			PBCR		•		
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		•	HQW	
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		•		
Unnamed tributary to Caddo Creek	310800		HLAC				SBCR				
Rock Creek downstream from Site #18 Dam	310800	PPWS	WWAC	•		•	PBCR		•		
SCS Site #18 including Watershed	310800	PPWS	WWAC	•		•	PBCR		•	SWS	
Hickory Creek downstream from Mountain Lake	310800	PPWS	WWAC	•		•	PBCR		•		
Mountain Lake and Watershed	310800	PPWS	WWAC	•		•	PBCR		•	SWS	
Rock Creek including Arbuckle Reservoir	310800	PPWS	WWAC	1		•	PBCR		•	SWS	
Guy Sandy Creek	310800	PPWS	WWAC	•		•	PBCR		•	HQW	
Dry Sandy Creek	310800	PPWS	WWAC	1		•	PBCR		•		
Tributary of Dry Sandy Creek at Sec. 7, T1S, R2E, IM	310800		HLAC	•		•	SBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Honey Creek	310800	PPWS	WWAC	•		•	PBCR		•	HQW	
Chigley Sandy Creek	310800	PPWS	WWAC	•		•	PBCR		•		
Wildhorse 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		•	SWS	
Humphreys Lake and Watershed	310810	PPWS	WWAC	•		•	PBCR		•	SWS	
Kickapoo Sandy Creek	310810	PPWS	WWAC	•		•	PBCR		•		
Turkey Sandy Creek	310810		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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Taylor (Marlow) Lake near Rush Springs	310810	PPWS	WWAC	•		•	PBCR		•		NLW
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		•		
East Roaring Creek	310810		WWAC				PBCR		•		
Laflin 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		•		
Ionine Creek	310820	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Jack Hollow Creek	310820	PPWS	WWAC	•		•	PBCR		•		
Spring Creek including Chickasha Reservoir	310830	PPWS	WWAC	•		•	PBCR		•		
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	•		•	SBCR		•		
Oak Creek	310830	PPWS	WWAC	•		•	PBCR		•		
Vanderwork 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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
East Barnitz Creek	310830	PPWS	WWAC	•		•	PBCR		•		
West Barnitz Creek	310830	PPWS	WWAC	•		•	PBCR		•		
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	1		•	PBCR		•	SWS	
Red River from headwaters of Lake Texoma to Cache Creek	311100 & 311120	PPWS	WWAC	•		•	PBCR		•		
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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Whiskey Creek	311100		HLAC	•		•	SBCR		•		
Cottonwood Creek	311100	PPWS	WWAC	1		•	PBCR		•		
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		•		
Claridy 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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Beaver Creek upstream from and including Waurika Reservoir	311210	PPWS	WWAC	•		•	PBCR		•	SWS	
Walker Creek	311210	PPWS	WWAC	1		•	PBCR		•	SWS	
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		•	HQW	
Panther Creek	311310	PPWS	WWAC	•		•	PBCR		•	HQW	
West Cache Creek upstream from Panther Creek	311310	PPWS	WWAC	•		•	PBCR		•	HQW	
East Cache Creek downstream from Lake Ellsworth	311300	PPWS	WWAC	1		•	PBCR		•		
Temple Lake and Watershed	311300	PPWS	WWAC	•		•	PBCR		•	SWS	
Walters Lake and Watershed	311300	PPWS	WWAC	•		•	PBCR		•	SWS	
Ninemile Creek	311300		WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Tributary to Ninemile Creek within Sec. 23, T 1 N, R 11 WIM including Comanche Lake	311300		WWAC			•	PBCR		•		
Wolf Creek	311300	PPWS	WWAC	•		•	PBCR		•		
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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		•		
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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		•		
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	Aes	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	
Panther Creek	410210	PPWS	CWAC	•			PBCR		•	ORW	
Buffalo Creek	410210	PPWS	CWAC	•			PBCR		•	SWS	
Big Hudson	410210		CWAC				PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Mine Creek	410210		CWAC	•			PBCR		•		
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		CWAC	•			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	

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Silver Creek	410210		CWAC	•			PBCR		•		
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, IM	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		CWAC	•			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		•		
Tenmile 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		•		
Lick 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
Clear Boggy Creek	410400	PPWS	WWAC	•		•	PBCR		•		
Mayhew Creek	410400		WWAC	•			PBCR		•		
Unnamed tributary to Mayhew Creek at sect. 7, T6S, R14E, IM	410400		HLAC				SBCR		•		
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, IM	410400		HLAC	•		•	SBCR		•		
Bois D' Arc Creek	410400		WWAC				PBCR		•		
(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, IM	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, IM	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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Town Branch	410400		HLAC	•		•	SBCR		•		
Whitegrass Creek	410400	PPWS	WWAC	•		•	PBCR		•		
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	
Adams Creek	520700	PPWS	WWAC				PBCR		•		
Flat 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		•		
Brown's Creek	520700	PPWS	WWAC				PBCR		•		
Little Deep Fork Creek upstream from Sand Creek to State Hwy. 48 Bridge	520700	PPWS	HLAC	•		•	SBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Little Deep Fork Creek upstream from State Hwy. 48 Bridge	520700	PPWS	WWAC	•		•	PBCR		•		
Catfish Creek	520700	PPWS	WWAC	•			PBCR		•		
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	•		•	SBCR		•		
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, R3E, IM	520700		HLAC	•		•	SBCR		•		
Kickapoo Creek	520700	PPWS	WWAC	•		•	PBCR		•		
East Captain Creek	520700	PPWS	WWAC	•		•	PBCR		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Bear Creek	520700	PPWS	WWAC	•		•	PBCR		•		
Smith Creek	520700	PPWS	HLAC	1		•	PBCR		•		
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		•		
Weleetka 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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		•		
Tributary of Sand Creek at SW 1/4, Sec. 34, T11N, R8E, IM	520510		HLAC	•		•	SBCR		•		
Boley Creek	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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		•		
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	
Bird 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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		•		
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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
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		•		
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		•		
Buckeye Creek	620900		WWAC				PBCR		•		
Tiger Creek	620900		WWAC	•		•	PBCR		•		
Euchee Creek downstream from Sec. 5, T17N, R6E, IM	620900	EWS	WWAC	•		•	PBCR		•		
Euchee Creek upstream from Sec. 5, T17N, R6E, IM	620900	EWS	WWAC	•		•	SBCR		•		
Cottonwood 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		•	SWS	
Stillwater Creek downstream from Little Stillwater Creek	620900	PPWS	WWAC	•		•	PBCR		•		
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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Brush Creek	620900		HLAC	•		•	SBCR		•		
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		•	SWS	
Beaver Creek	620900	PPWS	WWAC	•		•	PBCR		•		
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		•		
Cottonwood Creek	620910	PPWS	WWAC	2		•	PBCR		•		
Guthrie Lake and Watershed	620910	PPWS	WWAC	•		•	PBCR		•	SWS	

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Liberty Lake and Watershed	620910	PPWS	WWAC	•		•	PBCR		•	SWS	
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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Elm Creek	620910	PPWS	WWAC	•		•	PBCR		•		
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		HLAC	•		•	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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Moccasin Creek	620920	PPWS	WWAC	•		•	PBCR		•		
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		•		

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Fairfax Lake and Watershed	621200	PPWS	WWAC	•		•	PBCR		•	SWS	
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		•		
Stink Creek	621100	PPWS	WWAC	•		•	PBCR		•		
Bitter Creek	621100	PPWS	WWAC	•		•	PBCR		•		
Doe 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
Bluff Creek	621100	PPWS	WWAC	•		•	PBCR		•		
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, IM	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	•		•	PBCR		•		
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	

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Arkansas River upstream from Kaw Dam to Kansas State Line	621210	PPWS	WWAC	•		•	PBCR		•		
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	

Waterbody Name and Sequence	WQM Segment	Water Supply	F&W Prop	Ag	HP	M&I	Rec	Nav	Aes	Limitations	Remarks
Otter 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		•		
Goff 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		•		
Carrizozo Creek	720900	PPWS	WWAC	•		•	PBCR		•		

APPENDIX B. AREAS WITH WATERS OF RECREATIONAL AND/OR ECOLOGICAL SIGNIFICANCE [REVOKED]

APPENDIX B. AREAS WITH WATERS OF RECREATIONAL AND/OR ECOLOGICAL SIGNIFICANCE [NEW]

The following tables list National and State parks, National forests, wildlife areas, wildlife management areas, wildlife refuges (Table 1) and areas which contain federally listed threatened or endangered species pursuant to the Federal Endangered Species Act (Table 2).

TABLE 1 - National and State Parks, National Forests, Wildlife Areas, Wildlife Management Areas, and Wildlife Refuges

PROTECTED AREA/WATER	WQM Segment
Adair State Park	121700
Alabaster Caverns State Park	620920
Altus-Lugert Wildlife Management Area	311510
Arrowhead State Park	220600
Atoka Wildlife Management Area	410400
Beaver River Wildlife Management Area	720500
Beaver State Park	720500
Beavers Bend Resort State Park	410200
Bernice State Park	121600
Black Kettle National Grasslands	310840
Black Kettle Wildlife Management Area	310840
Black Mesa State Park/Preserve	720900
Blue River Wildlife Management Area	310800
Boggy Depot State Park	410400
Boiling Springs State Park	720500
Boswell State Park	410400
Broken Bow Wildlife Management Area	410210
Candy Wildlife Management Area	121300
Canton Wildlife Management Area	720500
Cherokee State Parks I, II, III	121600
Cherokee Landing State Park	121700

Chickasaw National Recreation Area	310800
Chickasaw Wildlife Management Area	310800
Chouteau Wildlife Management Area	121500
Clayton Lake State Park	410300
Cookson Hills Wildlife Management Area	220200
Cooper Wildlife Management Area	720500
Copan Wildlife Management Area	121400
Crowder Lake State Park	310830
Deep Fork National Wildlife Refuge	520700
Deep Fork Wildlife Management Area	520700
Disney/Little Blue State Parks	121600
Dripping Springs State Park (Delaware)	121700
Dripping Springs State Park (Okmulgee)	520700
Ellis Co. Wildlife Management Area	520600
Eufaula Wildlife Management Area	520500 520700 220600
Five Civilized Tribes State Park	121600
Fobb Bottom Wildlife Management Area	311100
Fort Cobb State Park	310830
Fort Cobb Wildlife Management Area	310830
Fort Gibson Wildlife Management Area	121600
Fort Supply Wildlife Management Area	720500
Foss State Park	310830
Fountainhead State Park	520700
Gary Sherrer Wildlife Management Area	410310
Great Plains State Park	621010
Great Salt Plains State Park	621010
Greenleaf State Park	120400
Gruber/Cherokee Wildlife Management Area	120400
Hackberry Flat Wildlife Management Area	311310

Heavener Runestone State Park	220100
Heyburn Wildlife Management Area	120400
Hickory Creek Wildlife Management Area	311100
Hochatown State Park	410200
Honey Creek State Park	121600
Honobia Creek Wildlife Management Area	410210
Hugo Wildlife Management Area	410300
Hulah Wildlife Management Area	121400
James M. Collins Wildlife Management Area	220600
John Dahl Wildlife Management Area	621200
Kaw Wildlife Management Area	621210
Keystone State Park	620900
Keystone Wildlife Management Area	620900 621200
Lake Eucha State Park	121600
Lake Murray State Park	311100
Lake Texoma Resort Park	310000
Lake Wister State Park	220100
Lexington Wildlife Management Area	520600
Little River National Wildlife Refuge	410200
Little River State Park	520810
Love Valley Wildlife Management Area	311100
McClellan-Kerr Wildlife Management Area	120400
McCurtain Co. Wilderness Area	410210
McGee Creek State Park	410400
McGee Creek Wildlife Management Area	410400
Mountain Park Wildlife Management Area	311500
Oklahoma Bat Caves National Wildlife Refuge	121600
Okmulgee State Park	520700
Okmulgee Wildlife Management Area	520700

Oologah Wildlife Management Area	121510
Optima National Wildlife Refuge	720510
Optima Wildlife Management Area	720510
Osage Hills State Park	121400
Osage-Western Wall Rock Creek Wildlife Management Area	121400
Ouachita National Forest	410210 410310 220100
Ouachita Wildlife Management Area	220100
Packsaddle Wildlife Management Area	520620
Pine Creek Wildlife Management Area	410201
Pushmataha Wildlife Management Area	410300
Quartz Mountain State Resort Park	311510
Raymond Gary State Park	410300
Red Rock Canyon State Park	310830
Redbud Valley Conservancy Area	121300
Rita Blanca National Grasslands	720510
Robbers Cave State Park	220100
Robbers Cave Wildlife Management Area	220100
Robert S. Kerr State Wildlife Management Area	220200
Roman Nose State Park	620910
Sallisaw State Park	220200
Sandy Sanders Wildlife Management Area	311800
Salt Plains National Wildlife Refuge	621010
Sequoyah National Wildlife Refuge	220200
Sequoyah State Park/Western Hills Resort Park	121600
Sheppard Point Recreational Area	120400
Skiatook Wildlife Management Area	121300
Snowdale State Park	121600
Spavinaw State Park	121600
Spavinaw Hills Wildlife Management Area	121600

Spiro Mound State Park	220200
Stinchcomb Wildlife Refuge	520520
Stringtown Wildlife Management Area	410400
Sutton Wilderness Area	520810
Talimena State Park	410310
Tenkiller State Park	121700
Tenkiller Wildlife Management Area	121700
Texoma/Washita Arm Wildlife Management Area	310800
Tishomingo National Wildlife Refuge	310800
Tishomingo Wildlife Management Area	310800
Turkey Creek Recreational Area	410210
Twin Bridges State Park	121600
Wahshashe State Park	121400
Walnut Creek State Park	621200
Washita National Wildlife Refuge	310840
Waurika Wildlife Management Area	311210
Webbers Falls Wildlife Management Area	120400
Wichita Mountains National Wildlife Refuge	311310 311500
Yourman Wildlife Management Area	220600

TABLE 2 - Areas Which contain federally listed Threatened or Endangered Species pursuant to the Federal Endangered Species Act

PROTECTED AREA/WATER	WQM SEGMENT
Black Fork Creek in Pushmataha County from its junction with Little River upstream to Oklahoma Highway 144 crossing.	410210
East Fork and West Fork Creek. East Fork of Glover Creek (River), main channel in McCurtain County from its junction with the West Fork Glover Creek (River) upstream to 4 air miles north-northeast of the community of Bethel in Section 5, T 2 S, R 24 EIM	410210
Glover Creek (River), main channel in Pushmataha County from Oklahoma Highway 7 crossing upstream to the junction of the East Fork and West Fork of the Glover Creek (River)	410210
Kiamichi River above Hugo Reservoir	410300
Little River, main channel in Pushmataha County from the mouth to Cloudy Creek upstream to the Pushmataha County Line	410210
Little River below Pine Creek Reservoir	410200 410210
Mountain Fork Creek (River), main Channel in McCurtain county, from mouth of Boktukola Creek 6 air miles south-southwest of Smithville, upstream to the Oklahoma-Arkansas State line	410210
Neosho (Grand) River above Miami	121600
West Fork Glover Creek (River), main channel in Pushmataha County from its junction with the East Fork Glover River upstream to the community of Battiest	410210

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_u, be the larger of 7Q2 or 1 cfs. One cfs shall be used if the 7Q2 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^*, $\equiv Q_e/Q_u$ 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* < 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* > 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 < 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 > or equal to 3 feet where D is pipe diameter.

PE equals $23.8\sqrt{W}$, W > 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 = 100Ve/(Ve + Vr), where Ve and Vr are volumes of effluent and receiving water required for the toxicity test, respectively, Ve = PE/100 (L). If PE = 25%, Ve = .25L. Given that Ve + Vr = 1 (L) in this example, Vr = 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 $f_i \equiv C_{Di}/C_{Ti}$, where C_{Di} is the dissolved concentration in the ith 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.

$$\therefore f = \exp\left[\sum_{i=1}^{n} [\ln(f_i)]/n \right]$$

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
$S_{ast} = C_{csd}/(f x FWER_d)$
$S_{cst} = C_{csd}/(f x FWER_d)$

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 µg/L	Statewide criterion
S_{cst} = 22.24 µg/L	Option 1
S_{cst} = 10.68 µg/L	Option 2
S_{cst} = 36.76 µg/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 µg/L	Statewide criterion
S_{cst} = 65 µg/L	Option 1
S_{cst} = 15.3 µg/L	Option 2
S_{cst} = 74 µg/L	Option 3

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.

$FWER_t = 2.5912$
$FWER_d = 0.2914$
$f = 0.7157$

The results of the study allow any of the four following criteria to be utilized.

$C_{cst} = 2.3492$ µg/L	Statewide criterion
$S_{cst} = 0.9066$ µg/L	Option 1
$S_{cst} = 2.7104$ µg/L	Option 2
$S_{cst} = 9.3036$ µg/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.

$FWER_t = 1.1244$
$FWER_d = 0.9735$
$f = 0.5798$

The results of the study allow any of the four following criteria to be utilized.

$C_{cst} = 128.8834$ µg/L	Statewide criterion
$S_{cst} = 114.6242$ µg/L	Option 1
$S_{cst} = 221.6226$ µg/L	Option 2
$S_{cst} = 227.6697$ µg/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.

$FWER_t = 0.6714$
$FWER_d = 0.7178$
$f = 0.6213$

The results of the study allow any of the four following criteria to be utilized.

$C_{cst} = 96.6161$ µg/L	Statewide criterion
$S_{cst} = 129.0082$ µg/L	Option 1
$S_{cst} = 137.4592$ µg/L	Option 2
$S_{cst} = 191.4874$ µg/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.

$FWER_t = 0.053$
$FWER_d = 0.224$
$f = 0.368$ (0.37)

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.

$C_{cst} = 35.9$ µg/L	Statewide criterion
$S_{cst} = 677$ µg/L	Option 1
$S_{cst} = 94.0$ µg/L	Option 2
$S_{cst} = 416.0$ µg/L	Option 3 (Recommended in OG&E study)
$C_{ast} = 59.8$ µg/L	Statewide criterion
$S_{ast} = 1128$ µg/L	Option 1
$S_{ast} = 156.0$ µg/L	Option 2
$S_{ast} = 692.0$ µg/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.

$FWER_t = 0.1850$
$FWER_d = 0.1765$
$f = 0.2969$

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.

$C_{cst} = 4.02$ µg/L	Statewide criterion
$S_{cst} = 21.73$ µg/L	Option 1
$S_{cst} = 13.0$ µg/L	Option 2
$S_{cst} = 73.66$ µg/L	Option 3 (Recommended in Poteau study)
$C_{ast} = 5.35$ µg/L	Statewide criterion
$S_{ast} = 28.92$ µg/L	Option 1
$S_{ast} = 17.31$ µg/L	Option 2
$S_{ast} = 98.09$ µg/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.

$FWER_t = 0.4040$

$FWER_d = 0.4276$

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.

$C_{cst} = 33.59$ µg/L	Statewide criterion
$S_{cst} = 83.14$ µg/L	Option 1 (Recommended in Poteau study)
$C_{ast} = 37.08$ µg/L	Statewide criterion
$S_{ast} = 91.78$ µg/L	Option 1 (Recommended in Poteau study)

6. City of Heavener Discharge to Morris Creek at SE 1/4 of NW 1/4 of Section 30, T 7 N, R 26 EIM, LeFlore County, Oklahoma: Copper

A site specific criteria modification study has been satisfactorily completed for copper for the City of Heavener discharge to Morris Creek.

$FWER_t = 0.1294$
$FWER_d = 0.1216$
$f = 0.8595$

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.

$C_{cst} = 4.02$ µg/L	Statewide criterion
$S_{cst} = 31.07$ µg/L	Option 1
$S_{cst} = 4.68$ µg/L	Option 2
$S_{cst} = 38.50$ µg/L	Option 3 (Recommended in Morris Ck. study)
$C_{ast} = 5.35$ µg/L	Statewide criterion
$S_{ast} = 41.34$ µg/L	Option 1
$S_{ast} = 6.22$ µg/L	Option 2
$S_{ast} = 51.19$ µg/L	Option 3 (Recommended in Morris Ck. study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

APPENDIX G. NUMERICAL CRITERIA TO PROTECT BENEFICIAL USES [REVOKED]

APPENDIX G. NUMERICAL CRITERIA TO PROTECT BENEFICIAL USES [NEW]

(a) **Introduction.** This Appendix prescribes numerical limits for certain criteria which are necessary to protect beneficial uses as and wherever designated. Table 1 is a chart that states the numerical limits to protect the beneficial use and subcategories of Fish and Wildlife Propagation for the single parameter of dissolved oxygen as set forth in OAC 785:45-5-12(f)(1). The latter limits vary depending upon several factors including the pertinent subcategory or fishery class, the time of the year, and the seasonal temperature. Table 2 prescribes the numerical limits that cannot be exceeded for certain substances or parameters in order to protect beneficial uses and subcategories as set forth in OAC 785:45-5-10(1), 785:45-5-10(6), 785:45-5-12(f)(6), and 785:45-5-20. The numerical limits may vary from one beneficial use or subcategory to another according to how the criteria are required by OAC 785:45 or OAC 785:46 to be implemented. Table 3 is a chart that sets forth conversion factors that can be used to determine criteria for dissolved metals in order to protect the beneficial use of Fish and Wildlife Propagation and all its subcategories as set forth in OAC 785:45-5-12(f)(6)(H).

(b) **Explanations for abbreviations and certain terms in Tables.**

(1) "CAS #" refers to a parameter's Chemical Abstract Service registry number. Each of these numbers is a unique identifier of a particular compound with a particular structure; the number provides additional and further specificity for the parameter in question than simply identifying it by a systematic, generic, proprietary, or [trivial] name. The CAS number has no particular chemical significance.

(2) Equations are prescribed for those substances the toxicity of which varies with water chemistry.

(3) Metals that are listed in Tables 2 and 3 shall be measured as total metals in the water column.

Table 1.

Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation and All Subcategories Thereof

SUBCATEGORY OF FISH AND WILDLIFE PROPAGATION (FISHERY CLASS)	DATES APPLICABLE	D.O. CRITERIA (MINIMUM) (mg/L)	SEASONAL TEMP. (°C)
Habitat Limited Aquatic Community			
Early Life Stages	4/1 - 6/15	4.0	25[3]
Other Life Stages			
Summer Conditions	6/16 - 10/15	3.0	32
Winter Conditions	10/16 - 3/31	3.0	18
Warm Water Aquatic Community			
Early Life Stages	4/1 - 6/15	6.0[2]	25[3]
Other Life Stages			
Summer Conditions	6/16 - 10/15	5.0[2]	32
Winter Conditions	10/16 - 3/31	5.0	18
Cool Water Aquatic Community And Trout			
Early Life Stages	3/1 - 5/31	7.0[2]	22
Other Life Stages			
Summer Conditions	6/1 - 10/15	6.0[2]	29
Winter Conditions	10/16 - 2/28	6.0	18

[1] For use in calculation of the allowable load.

[2] Because of natural diurnal dissolved oxygen fluctuation, a 1.0 mg/l dissolved oxygen concentration deficit shall be allowed for not more than eight (8) hours during any twenty-four (24) hour period.

[3] Discharge limits necessary to meet summer conditions will apply from June 1 of each year. However, where discharge limits based on Early Life Stage (spring) conditions are more restrictive, those limits may be extended to July 1.

TABLE 2.
Numerical Criteria to Protect Beneficial Uses and All Subcategories Thereof

PARAMETER	CAS #	Fish & Wildlife Propagation		Public and Private Water Supply (Raw Water)	Fish Consumption and Water	Fish Consumption
		ACUTE	CHRONIC			
		µg/L	µg/L	mg/L	µg/L	µg/L
INORGANICS						
Arsenic	7440382	360.0	190	0.04		205.0
Barium	7440393			1.00		
Cadmium	7440439	e(1.128[ln(hardness)] -1.6774)	e(0.7852[ln(hardness)]-3.490)	0.020	14.49	84.13
Cadmium for trout streams		e(1.128[ln(hardness)] - 3.828)	e(0.7852[ln(hardness)]-3.490)	0.020	14.49	84.13
Chromium (total)			50	0.050	166.3	3365.0
Copper	7440508	e(0.9422[ln(hardness)]- 1.3844)	e(0.8545[ln(hardness)]-1.386)	1.000		
Cyanide	57125	45.93	10.72	0.200		
Flouride @ 90° F				4.0		
Lead	7439921	e(1.273[ln(hardness)] - 1.460)	e(1.273[ln(hardness)] - 4.705)	0.100	5.0	25.0
Mercury	7439976	2.4	1.302	0.002	0.050	0.051
Nickel	7440020	e(0.8460[ln(hardness)]+3.3612)	e(0.846[ln(hardness)]+ 1.1645)		607.2	4583.0
Nitrates (as N)	14797558			10.000		
Selenium	7782492	20.0	5	0.010		
Silver	7440224	e(1.72[ln(hardness)] - 6.52)		0.050	104.8	64620.0
Thallium	7440280	1400.0			1.7	6.0
Zinc	7440666	e(0.8473[ln(hardness)]+0.8604)	e(0.8473[ln(hardness)]+0.7614	5.000		
ORGANICS						
1-1-1 TCE	71556				3094.0	173100.0
2-4-5-TP Silvex	93721		10.0	0.010		
2-4-6-TNT		450.0				
2-4-D	94757			0.100		

PARAMETER	CAS #	Fish & Wildlife Propagation		Public and Private Water Supply (Raw Water)	Fish Consumption and Water	Fish Consumption
		ACUTE	CHRONIC			
		µg/L	µg/L	mg/L	µg/L	µg/L
Acrylonitrile	107131	7550.0			.59	6.7
Aldrin	309002	3.0			0.001273	0.001356
Benzene	71432		2200.0		11.87	714.1
Benzidine	92875			0.001		
Butylbenzyl Phthalate	85687			0.150		
Carbon Tetrachloride	56235				2.538	44.18
Chlordane	57749	2.4	0.17		0.00575	0.00587
Chloroform	67663				56.69	4708.0
Chlorpyrifos (Dursban)	2921882	0.083	0.041			
DDT		1.1	0.001		0.005876	0.0059
Demeton	8065483		0.1			
Detergents (total)				0.200		
Dichlorobromomethane	75274				1.9	157.0
Dieldrin	60571	2.5	0.0019		0.001352	0.00144
Dioxin	1746016				0.00000013	0.000000138
Endosulfan		0.22	0.056			
Endrin	72208	0.18	0.0023	0.0002	.7553	0.814
Ethylbenzene	100414				3120.0	28720.0
Guthion	86500		0.01			
Gamma BHC	58899	2.0	0.08	0.004	.1458	0.4908
Heptachlor	76448	0.52	0.0038		0.00208	0.00214
Hexachlorobenzene	118741				0.009026	0.009346
Malathion	121755		0.10			
Methoxychlor	72435		0.03	0.100		

PARAMETER	CAS #	Fish & Wildlife Propagation		Public and Private Water Supply (Raw Water)	Fish Consumption and Water	Fish Consumption
		ACUTE	CHRONIC			
		µg/L	µg/L	mg/L	µg/L	µg/L
Methylene blue active substances			0.001	0.500		
Mirex	2385855		0.001			
Parathion	56382	0.065	0.013			
PCB			0.044		0.00079	0.00079
PCE (Tetrachloroethylene)	127184	5280.0			8.0	88.5
Pentachlorophenol	87865	e[1.005(pH)-4.830	e[1.005(pH)-5.290]		1014.0	29370.0
Phenol	108952				20900.0	4615000.0
Phthalate esters				0.003		
RDX	121824	2591.5				
Toluene	108883		875.0		10150.0	301900.0
Toxaphene	8001352	0.78	0.0002	0.005		

Table 3.
Conversion Factors for Total to Dissolved Fractions [H=hardness as $CaCO_3$ (mg/L)]

METAL	CAS #	ACUTE	CHRONIC
Arsenic	7440382	1.000	1.000
Cadmium	7440439	1.136672 - 0.041838lnH	1.101672 - 0.041838 lnH
Copper	7440508	0.960	0.960
Lead	7439921	1.46203 - 0.145712 lnH	1.46203 - 0.145712 lnH
Mercury	7439976	0.85	N/A
Nickel	7440020	0.998	0.997
Silver	7440224	0.85	N/A
Zinc	7440666	0.978	0.986

[OAR Docket #04-855; filed 5-6-04]

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

[OAR Docket #04-854]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:46-1-2. Definitions [AMENDED]
Subchapter 5. Implementation Of Numerical Criteria To Protect Fish And Wildlife From Toxicity Due To Conservative Substances
785:46-5-8. pH and hardness dependent toxicity [AMENDED]
Subchapter 7. Implementation of Numerical Criteria to Protect Human Health from Toxicity Due to Conservative Substances
785:46-7-1. Applicability and scope [AMENDED]
Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use
785:46-9-5. Reasonable potential [AMENDED]
Subchapter 11. Implementation of Temperature Criteria to Protect Fish and Wildlife Propagation
785:46-11-2. Applicable temperatures [AMENDED]
Subchapter 15. Use Support Assessment Protocols
785:46-15-1. Scope and applicability [AMENDED]
785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]
785:46-15-6. Assessment of Primary Body Contact Recreation support [AMENDED]
785:46-15-7. Assessment of Public and Private Water Supply support [AMENDED]
785:46-15-10. Nutrients [AMENDED]
785:46-15-11. Assessment of Hydroelectric Power Generation support [NEW]
785:46-15-12. Assessment of Industrial and Municipal Process and Cooling Water support [NEW]
785:46-15-13. Assessment of Navigation support [NEW]
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.
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ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has adopted amendments to various provisions of Oklahoma Administrative Code ("OAC") 785:46 as follows:

OAC 785:46-15-1 has been amended to add language to address an evolution of terminology relating to use support. The circumstances which created the need for this amendment are that in recent years, various sources including the Code of Federal Regulations and the applicable U.S. Environmental Protection Agency ("EPA") guidance document have employed the terms "water quality limited segments", "not attained", and "impaired" interchangeably with the language "not supported" and "partially supported". The intended effect of this amendment is to employ all of these terms in context and describe how they are interchangeable.

OAC 785:46-15-5 has been amended to provide special rules for determining beneficial use support in wadable streams in the Central Oklahoma - Texas Plains ecoregion. These amendments were needed because of the inability to measure directly the support for aquatic life beneficial uses in these streams. The intended effect of these amendments is to create an ability to measure aquatic life use support in the specified streams.

OAC 785:46-15-5 has also been amended to add language (a) addressing naturally occurring conditions in the context of dissolved oxygen, (b) expanding the citation to the criteria for toxic substances, and (c) for assessing impacts from oil and grease, regarding the beneficial use of Fish and Wildlife Propagation. The first set of these amendments is needed because OAC 785:45 excuses naturally occurring conditions as a source for exceedance of the criteria for dissolved oxygen. However, the use support assessment protocol ("USAP") rules in OAC 785:46 currently do not recognize this excuse. There are some waterbodies identified in the State's 2002 Integrated Report (formerly the "305(b) Report" and the "303(d) List") where it may have been appropriate to apply such exemptions. The intended effect of these amendments is to help prevent determinations of non-support in waterbodies where the dissolved oxygen exceedances are not attributable to pollutants. The second set of these amendments is needed because the current USAP rule does not address toxic material not specifically listed with the numerical criteria in OAC 785:45-5-12(f)(6)(G). The intended effect of these amendments is to allow determination of use support with respect to toxicants listed elsewhere in 785:45-5-12(f)(6) if they are identified in the waterbody. The third set of these amendments is needed because the current USAP rules do not provide a protocol for determining Fish and Wildlife Propagation use support with respect to oil and grease. The intended effect of these amendments is to allow determination of Fish and Wildlife Propagation use support with respect to oil and grease.

OAC 785:46-15-6 has been amended to add language to address the presence of multiple indicators of bacteria. This amendment is needed to avoid the possibility of an interpretation that a discharger may choose to test for all three of the listed indicators (coliform, E. coli, and enterococci) and then report only the result that passed rather than a result that failed. The intended effect of this amendment is to make clear that use support shall be determined using all applicable tests.

OAC 785:46-15-7 has been amended to add language for assessing impacts from oil and grease regarding the beneficial use of Public and Private Water Supply. These amendments are needed because the current USAP rules do not provide a protocol for determining Public and Private Water Supply use support with respect to oil and grease. The intended effect of these amendments is to allow determination of Public and Private Water Supply use support with respect to oil and grease.

New Sections 785:46-15-11, 785:46-15-12 and 785:46-15-13 have been adopted to provide USAP rules for the beneficial uses of Hydroelectric Power Generation, Industrial and Municipal Process and Cooling Water, and Navigation. These rules are needed because these beneficial uses are not addressed in the current USAP rules, yet water quality reporting and use support determinations must be done anyway. The intended effect of these new rules is to provide straightforward rules deeming these uses fully supported for purposes of water quality reporting.

Several provisions throughout OAC 785:46 have been amended to correct grammatical and other errors and to update citations. These amendments are needed because several rules contain grammatical and other errors. Additionally, citations have evolved and need to be updated wherever they are referenced. The intended effect of these amendments is to make the rules reflect the appropriate grammar and citations and otherwise to state their text accurately.

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.
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, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

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:

~~**"σy"** 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 mth 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.

"C95" means the 95th percentile maximum likelihood concentration.

"Cb" means background concentration.

"Ce" means effluent concentration.

"cfs" means cubic feet per second.

"Cmean" means the geometric mean of all effluent concentrations analyzed for the toxicant.

"Ct" 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.

"LMFO" means licensed managed feeding operation as defined in 2 O.S. 9-202.

"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.

"Qe" means the regulatory effluent flow.

"Qel" means long term average effluent flow.

"Qes" means short term average effluent flow.

"Qu" 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.

"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.

"Ta" means regulatory ambient temperature.

"Tc" means the temperature criterion.

"Tf" 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.

"Trophic State Index" means a numerical quantification of lake productivity. The Trophic State Index shall be determined by TSI = 9.81 x Ln(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.

"WET" means whole effluent toxicity.

"YMS" means yearly mean standard as defined in OAC 785:45-1-2.

SUBCHAPTER 5. IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT FISH AND WILDLIFE FROM TOXICITY DUE TO CONSERVATIVE SUBSTANCES

785:46-5-8. pH and hardness dependent toxicity

The criteria for some of the substances listed in 785:45-5-12(f)(6) are hardness or pH dependent. The ~~segment-averaged~~ segment-averaged pH in Appendix B of this Chapter shall be used to determine the criterion if there is insufficient site specific data to determine receiving stream pH. The mean hardness of the receiving stream, collected near the outfall but not affected by the discharge (as ~~C_aCO_3~~ $CaCO_3$) may be used if at least 10 monthly samples were collected over a ten month period. The ~~segment-averaged~~ segment-averaged hardness in Appendix B of this Chapter shall be used in the determination of the criterion if there is insufficient site specific data to determine receiving stream hardness. If the required pH or hardness is not specified for a particular waterbody segment, appropriate data from surrounding waterbody segments may be used.

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) and OAC 785:45 Appendix G.

(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 and OAC 785:45 Appendix G.

(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.

SUBCHAPTER 9. IMPLEMENTATION OF CRITERIA TO PROTECT THE AGRICULTURE BENEFICIAL USE

785:46-9-5. 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 ~~$C = (Q_u BC + Q_e C_{95}) / (Q_u + Q_e)$~~ $\underline{C = (Q_u BC + Q_e C_{95}) / Q_u + Q_e)}$, 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.

SUBCHAPTER 11. IMPLEMENTATION OF TEMPERATURE CRITERIA TO PROTECT FISH AND WILDLIFE PROPAGATION

785:46-11-2. Applicable temperatures

(a) **General.** OAC 785:45-5-12(f)(2) governs what the applicable temperature criteria are.

(b) **Habitat limited and warm water aquatic community.**

(1) In waters which are designated in OAC 785:45 to be Habitat Limited Aquatic Community and/or Warm Water Aquatic Community, no heat of artificial origin shall be added that causes the receiving water to exceed the critical temperature plus 2.8°C outside the mixing zone.

(2) The temperature criterion for Habitat Limited Aquatic Community and/or Warm Water Aquatic Community, T_c, is the critical temperature plus 2.8°C. In the absence of data, T_c is 32.24°C. Where data exist, the critical temperature is the higher of 29.44°C or the seven-day maximum temperature likely to occur with a 50% probability each year, 7T2. 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 ~~785:45-5-4(b) provides, with specific exceptions, that numeric criteria assigned for the protection of fish and wildlife propagation in OAC~~ record, n, with a recurrence interval of 2 years, as $m = (n+1)/2$. The mth highest average temperature is the 7T2. Provided, in the segment of the Arkansas River from Red Rock Creek to the headwaters of Keystone Reservoir, the maximum temperature outside the mixing zone shall not exceed 34.4°C.

(3) To implement the temperature criterion for Habitat Limited Aquatic Community and/or Warm Water Aquatic Community protection, the critical temperature also is the regulatory ambient temperature, T_a.

(c) **Cool water aquatic communities.** In waters designated in OAC 785:45 to be Cool Water Aquatic Community, T_c is 28.9°C. To be consistent with implementation for warm water and habitat limited aquatic communities, the regulatory ambient temperature must be 2.8°C less than T_c. Therefore, T_a = 26.1°C for cool water aquatic communities.

(d) **Trout fisheries.** In waters designated in OAC 785:45 to be Trout Fishery, no artificial heat shall be added such that the temperature in the receiving water exceeds 20°C outside the mixing zone. However, water temperatures regularly reach in excess of 20°C in Oklahoma's summers. When background levels exceed this criterion, the effluent level should equal the criterion. Therefore, the wasteload allocation for trout fisheries is 20°C.

SUBCHAPTER 15. USE SUPPORT ASSESSMENT PROTOCOLS

785:46-15-1. Scope and applicability

(a) **General.** The rules in this Subchapter provide protocols which shall be used on and after October 1, 2000 to determine whether certain beneficial uses of waters of the state designated in OAC 785:45 are being supported. Such determinations shall be made only to the extent that pertinent provisions of OAC 785:45 apply to a waterbody or its designated uses. The rules in this Subchapter are not intended and should not be construed to limit any actions by federal or state agencies or citizens to prevent pollution or to limit remedies to abate pollution from a single incident or activity or series of incidents or activities.

(b) **Significance of assessment that a use is other than fully supported.** A determination based upon application of the rules in this Subchapter that a waterbody's beneficial use is not supported or is partially supported creates a presumption that the use is impaired <u>or not attained for that waterbody and that the waterbody segment is a water quality limited segment</u>.

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 due to other than naturally occurring conditions, 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 due to other than naturally occurring conditions, 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 and such result is due to other than naturally occurring conditions.

(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)~~ 785:45-5-12(f)(6)(D), (E) and (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)~~ 785:45-5-12(f)(6)(D), (E) and (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)~~ 785:45-5-12(f)(6)(D), (E) and (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)~~(h) through ~~(i)~~ (l), 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) **Oil and grease.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations.

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations.

(h) **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 this subcategory is supported shall be deemed undetermined.

(~~h~~i) **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~~j) **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~~k) **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.

(l) **Special provisions for Central Oklahoma - Texas Plains wadable streams.** The determination of whether the Warm Water Aquatic Community subcategory of the Fish and Wildlife Propagation beneficial use is supported for wadable streams located in the Central Oklahoma - Texas Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Such subcategory shall be deemed fully supported if the application of Appendix C produces a score of 26 or more.

(2) Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 19 or less.

(3) If the application of Appendix C produces a score of 20 to 25 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

785:46-15-6. Assessment of Primary Body Contact Recreation support

(a) **Scope.** The provisions of this Section shall be used to determine whether the subcategory of Primary Body Contact of the beneficial use of Recreation designated in OAC 785:45 for a waterbody is supported during the recreation season from May 1 through September 30 each year. Where data exist for multiple bacterial indicators on the same waterbody or waterbody segment, the determination of use support shall be based upon the use and application of all applicable tests and data.

(b) **Screening levels.**

(1) The screening level for fecal coliform shall be a density of 400 colonies per 100ml.

(2) The screening level for Escherichia coli shall be a density of 235 colonies per 100 ml in streams designated in OAC 785:45 as Scenic Rivers and in lakes, and 406 colonies per 100 ml in all other waters of the state designated as Primary Body Contact Recreation.

(3) The screening level for enterococci shall be a density of 61 colonies per 100 ml in streams designated in OAC 785:45 as Scenic Rivers and in lakes, and 406 colonies per 100 ml in all other waters of the state designated as Primary Body Contact Recreation.

(c) **Fecal coliform.**

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to fecal coliform if the geometric mean of 400 colonies per 100 ml is met and no greater than 25% of the sample concentrations from that waterbody exceed the screening level prescribed in (b) of this Section.

(2) The parameter of fecal coliform is not susceptible to an assessment that Primary Body Contact Recreation is partially supported.

(3) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to fecal coliform if the geometric mean of 400 colonies per 100 ml is not met, or greater than 25% of the sample concentrations from that waterbody exceed the screening level prescribed in (b) of this Section, or both such conditions exist.

(d) **Escherichia coli (*E. coli*).**

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to *E. coli* if the geometric mean of 126 colonies per 100 ml is met, or the sample concentrations from that waterbody taken during the recreation season do not exceed the screening level prescribed in (b) of this Section, or both such conditions exist.

(2) The parameter of *E. coli* is not susceptible to an assessment that Primary Body Contact Recreation is partially supported.

(3) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to *E. coli* if the geometric mean of 126 colonies per 100 ml is not met and any of the sample concentrations from that waterbody taken during the recreation season exceed a screening level prescribed in (b) of this Section.

(e) **Enterococci.**

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to enterococci if the geometric mean of 33 colonies per 100 ml is met, or the sample concentrations from that waterbody taken during the recreation season do not exceed the screening level prescribed in (b) of this Section, or both such conditions exist.

(2) The parameter of enterococci is not susceptible to an assessment that Primary Body Contact Recreation is partially supported.

(3) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to enterococci if the geometric mean of 33 colonies per 100 ml is not met and any of the sample concentrations from that waterbody taken during the recreation season exceed a screening level prescribed in (b) of this Section.

785:46-15-7. Assessment of Public and Private Water Supply support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Public and Private Water Supply or any subcategory thereof designated in OAC 785:45 for a waterbody is supported.

(b) **Toxicants.**

(1) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any substance with criteria for such use listed in ~~785:45-5-10(1) or 785:45-5-10(6)~~ OAC

785:45 Appendix G if the sample concentrations from that waterbody do not exceed the criterion for that substance prescribed in ~~785:45-5-10~~ OAC 785:45 Appendix G more than 10% of the time, or drinking water use restrictions are not in effect, or both such conditions exist.

(2) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be partially supported with respect to any substance with criteria for such use listed in ~~785:45-5-10(1) or 785:45-5-10(6)~~ OAC 785:45 Appendix G if the sample concentrations from that waterbody exceed the criterion for that substance prescribed in ~~785:45-5-10~~ OAC 785:45 Appendix G more than 10% but less than 25% of the time, or drinking water use restrictions imposed by an agency with jurisdiction in effect require more than conventional treatment, or both such conditions exist.

(3) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be not supported with respect to any substance with criteria for such use listed in ~~785:45-5-10(1) or 785:45-5-10(6)~~ OAC 785:45 Appendix G if the sample concentrations from that waterbody exceed the criterion for that substance prescribed in ~~785:45-5-10~~ OAC 785:45 Appendix G more than 25% of the time, or drinking water use restrictions imposed by an agency with jurisdiction in effect require closure of the water supply, or both such conditions exist.

(c) **Bacteria.** The screening level for fecal coliform bacteria shall be 5000 colonies per 100 ml. The tests for use support shall follow the default protocol in 785:46-15-4.

(d) **Threatened water supplies.** Waters of the state designated in OAC 785:45 as Public and Private Water Supply shall be presumed to be threatened when toxicants are detected but do not exceed the applicable criteria prescribed in ~~785:45-5-10~~ OAC 785:45 Appendix G, or some drinking water use restrictions have been put into effect by an agency with jurisdiction, or the potential for adverse impacts to water quality exists, or more than one such conditions exist.

(e) **Oil and grease.**

(1) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations, and drinking water use restrictions that require more than conventional treatment related to oil and grease have not been put into effect by an agency with jurisdiction.

(2) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations, or drinking water use restrictions that require more than conventional treatment related to oil and grease have been put into effect by an agency with jurisdiction.

785:46-15-10. Nutrients

(a) **General.** OAC 785:45-3-2(c) prohibits water quality degradation by nutrients which will interfere with the attainment or maintenance of any existing or designated beneficial use. OAC 785:46-13-3(a)(1) requires maintenance of any existing or designated beneficial use. This Section provides a framework which shall be used in assessing threats or impairments to beneficial uses and waterbodies and watersheds caused by nutrients, and the consequences of such assessments.

(b) **Determining whether a stream is nutrient-threatened.** The dichotomous process stated in this subsection shall be used in the determination of whether a stream is nutrient-threatened.

(1) The stream order shall be identified. If the stream order is 1, 2 or 3, then proceed to paragraph (2). If the stream order is not 1, 2 or 3, then proceed to paragraph (9).

(2) The stream slope shall be identified. If the stream slope is greater than or equal to 17 feet per mile, then proceed to paragraph (3). If the stream slope is less than 17 feet per mile, then proceed to paragraph (4).

(3) Subject to the application of the foregoing paragraphs of this subsection, if ~~phosphorous~~ phosphorus concentrations in the stream are greater than 0.24 mg/L or if nitrite plus nitrate concentrations in the stream are greater than 4.95 mg/L, then proceed to paragraph (5). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(4) Subject to the application of the foregoing paragraphs of this subsection, if ~~phosphorous~~ phosphorus concentrations in the stream are greater than 0.15 mg/L or if nitrite plus nitrate concentrations in the stream are greater than 2.4 mg/L, then proceed to paragraph (5). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(5) Subject to the application of the foregoing paragraphs of this subsection, if the percentage of canopy shading is greater than or equal to 80%, then the stream is not threatened by nutrients. If the percentage of canopy shading is less than 80%, then proceed to paragraph (6).

(6) Subject to the application of the foregoing paragraphs of this subsection, if the stream's turbidity is organic, then proceed to paragraph (7). If the stream's turbidity is inorganic, then proceed to paragraph (8).

(7) Subject to the application of the foregoing paragraphs of this subsection, if turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is not threatened by nutrients. If turbidity measured at seasonal base flow conditions is 20 or more NTU, then the stream is threatened by nutrients.

(8) Subject to the application of the foregoing paragraphs of this subsection, if turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is threatened by nutrients. If turbidity measured at seasonal base flow conditions is 20 or more NTU, then the stream is not threatened by nutrients.

(9) Subject to the application of the foregoing paragraphs of this subsection, if the stream slope is greater than or equal to 17 feet per mile, then proceed to paragraph (10). If the stream slope is less than 17 feet per mile, then proceed to paragraph (11).

(10) Subject to the application of the foregoing paragraphs of this subsection, if ~~phosphorous~~ phosphorus concentrations in the stream are greater than 1.00 mg/L, or if nitrite plus nitrate concentrations in the stream are greater than 4.65 mg/L, then proceed to paragraph (12). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(11) Subject to the application of the foregoing paragraphs of this subsection, if ~~phosphorous~~ phosphorus concentrations in the stream are greater than 0.36 mg/L, or if nitrite plus nitrate concentrations in the stream are greater than 5.0 mg/L, then proceed to paragraph (12). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(12) Subject to the application of the foregoing paragraphs of this subsection, if the stream's inorganic turbidity measured at seasonal base flow conditions is greater than or equal to 20 NTU, then the stream is not threatened by nutrients. If the stream's inorganic turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is threatened.

(c) **Alternative to dichotomous process for streams.**

(1) A wadable stream shall be deemed threatened by nutrients if the arithmetic mean of benthic chlorophyll-a data exceeds 100 mg per square meter under seasonal base flow conditions, or if two or more benthic chlorophyll-a measurements exceed 200 mg per square meter under seasonal base flow conditions. A non-wadable stream shall be deemed threatened by nutrients if planktonic chlorophyll-a values in the water column indicate it has a Carlson's Trophic State Index of 62 or greater.

(2) If clear and convincing evidence indicates a result for a stream different from that obtained from application of the dichotomous process in (b) of this Section, then the appropriate state environmental agency may, after completing the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101, accordingly identify the stream as threatened or not threatened by nutrients.

(d) **Demonstration that nutrients may be adversely impacting a beneficial use in a lake.** If it is demonstrated that nutrient loading in a lake may be adversely impacting a beneficial use designated for that waterbody, then the Board may determine that the lake and its watershed is an NLW, and shall identify the lake and watershed as NLW in Appendix A of OAC 785:45.

(e) **Consequence of identification as NLW; results of study.** If a lake or its watershed is identified as NLW in Appendix A of OAC 785:45, then the Board or other appropriate state environmental agency may cause an NLW Impairment Study to be performed. The beneficial uses designated for lakes identified in OAC 785:45 Appendix A as NLW shall be presumed to be fully supported but threatened, unless an NLW Impairment Study demonstrates that the uses are partially supported or not supported; provided, if an NLW Impairment Study demonstrates that the uses are not threatened, then the Board shall consider deleting the NLW identification.

(f) **Consequence of assessment that use is threatened by nutrients.** If it is determined that one or more beneficial uses designated for a waterbody are threatened by nutrients, then that waterbody shall be presumed to be nutrient-threatened. If it is determined or presumed, in accordance with this Section, that a waterbody is nutrient-threatened, then before the waterbody is determined to be nutrient-impaired, an NLW Impairment Study if a lake or an impairment study if a stream must be completed by the appropriate state environmental agency.

(g) **Result of impairment study.**

(1) **Impaired or threatened.** If, independent of or in addition to the process set forth in (b) of this Section, an impairment study of a waterbody demonstrates that a waterbody is impaired or threatened by nutrients, then the appropriate state environmental agency shall initiate the appropriate listing procedure developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101.

(2) **Not threatened nor impaired.** If, independent of or in addition to the process set forth in (b) of this Section, an impairment study of a waterbody demonstrates that a waterbody is neither threatened nor impaired by nutrients, then the appropriate state environmental agency shall initiate the appropriate de-listing procedure developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101.

785:46-15-11. Assessment of Hydroelectric Power Generation support

The Hydroelectric Power Generation beneficial use designated for a waterbody shall be deemed to be fully supported for the purpose of water quality reporting.

785:46-15-12. Assessment of Industrial and Municipal Process and Cooling Water support

The Industrial and Municipal Process and Cooling Water beneficial use designated for a waterbody shall be deemed to be fully supported for the purpose of water quality reporting.

785:46-15-13. Assessment of Navigation support

The Navigation beneficial use designated for a waterbody shall be deemed to be fully supported for the purpose of water quality reporting.

[OAR Docket #04-854; filed 5-6-04]

Executive Orders

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

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

TITLE 1. EXECUTIVE ORDERS

1:2004-15.

EXECUTIVE ORDER 2004-15

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by to Article VI of the Oklahoma Constitution, hereby revoke Executive Orders 2003-8 and 2004-3 and hereby order the appointment of Major Kerry Pettingill as Oklahoma Homeland Security Director at an annual salary the same as the Assistant Commissioner of Public Safety, as established in Section 2-105.4 of Title 47 of the Oklahoma Statutes. I also hereby designate that the Oklahoma Office of Homeland Security shall be located at the Oklahoma Department of Public Safety.

This Executive Order shall be distributed to the Secretary of Safety and Security for implementation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 3rd day of May, 2004.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-845; filed 5-4-04]

1:2004-16.

EXECUTIVE ORDER 2004-16

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the powers vested in me by the Oklahoma Statutes in 25 O. S. Section 82.1, hereby order the following dates be observed as holidays by the State of Oklahoma in 2005:

Friday	December 31, 2004	New Year's Day
Monday	January 17, 2005	Martin Luther King, Jr. Day
Monday	February 21, 2005	President's Day
Monday	May 30, 2005	Memorial Day
Monday	July 4, 2005	Independence Day
Monday	September 5, 2005	Labor Day
Friday	November 11, 2005	Veterans Day
Thursday & Friday	November 24 & 25, 2005	Thanksgiving
Monday	December 26, 2005	Christmas

This Executive Order shall be forwarded to the Director of the Office of Personnel Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 13 day of May, 2004.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-914; filed 5-13-04]

1:2004-17.

EXECUTIVE ORDER 2004-17

I, Brad Henry, Governor of the State of Oklahoma, by virtue of the Constitution and the laws of the State of Oklahoma, hereby commute the death sentence of Osvaldo Torres Aguilera to life imprisonment without the possibility for parole.

On May 7, 2004, the Oklahoma Pardon and Parole Board voted 3-2 to recommend to the Governor that clemency be

granted to Osvaldo Torres Aguilera. One member recommended his sentence of death be commuted to life without parole and two members recommended his sentence of death be commuted to life.

Since that time, I have thoroughly reviewed the arguments and evidence presented in this case. I have met in person with the defense attorney for Mr. Torres and an attorney representing the Mexican government. I also met with the Oklahoma Attorney General and members of his staff. Both sides were given the opportunity to submit information and make arguments both to me personally and to my legal staff.

After listening to the presentations and thoroughly reviewing the record in this matter, as well as the information presented at the clemency hearing, I have determined that clemency should be granted in this case.

Pursuant to Article 6, Section 10 of the Oklahoma Constitution, I hereby place the following condition upon this commutation of sentence:

Osvaldo Torres Aguilera shall not be eligible to be considered for parole for the remainder of his life.

This Executive Order shall be forwarded to the Director of the Oklahoma Department of Corrections and the Oklahoma Attorney General who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City this 13th day of May, 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-915; filed 5-13-04]